DELEGATED DECISION REPORT

SMD/2020/0370 **Valid 23/07/2020**	**CLAY LAKE FARM BREACH ROAD** **BROWN EDGE**	**CERTIFICATE OF LAWFULLNESS FOR THE EXISTING USE OF OCCUPATION OF EXISTING DWELLING WITHOUT COMPLYING WITH CONDITION 2 OF PLANNING PERMISSION 3563/68T** **(CERTIFICATE OF LAWFULNESS - EXISTING)**

MAIN ISSUES

The applicant is currently breaching condition 2 of the planning permission 3563/68.T that was granted to build their property as a dwelling for an agricultural worker on the 18th Dec 1968. The condition prevents it from being occupied or lived in by anybody other than a person employed in agriculture:

"The occupants of the house shall be limited to persons employed or last employed locally in agriculture as defined in s.221(1) of the Town and Country Planning Act 1962, or in forestry, and the dependants of such persons.

The only consideration is whether this breach of the condition was immune from enforcement action on the date of the application. The breach would become immune from action after a period of 10years.

THE APPLICATION

The applicant openly declares that their occupancy began in 2015, obviously short of a 10 year period. However, their claim relies on an argument that says their breach is the same breach as, and a continuation of, the previous occupant's breach of the condition.

The previous occupant did not comply with the occupancy condition and their occupancy and breach had exceeded 10 years before it ended sometime before 7th April 2015 when the property was sold.

The evidence does not make any clear statement as to exactly when the previous occupant moved out to live elsewhere. Initially a clear statement from the applicant says that she moved in on 1st Nov 2015 but during the application process she confused matters and provided a revisionary statement that claims their occupancy began in April 2015.

It is clear however, that Council tax records have the property registered as unoccupied between 11th April and 31st October 2015.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS
3563/68.T Erection of agricultural workers dwelling. 1963.

CONSULTATIONS

Publicity
Site Notice expiry date: 17th Sep 2020
Neighbour consultation period ends: 17th Sep 2020
Press Advert: N/A

Public Comments: None

Endon and Stanley Parish Council: No Objection

OFFICER COMMENTS

Summary of the applicant's evidence
With the submission of the application the applicant produced a statement where she quite clearly and precisely stated that she and her husband had moved into the property on the 1st Nov 2015. She says that the land registry title was transferred to her property company on the 11th December 2015. She then says that she has paid full Council tax on Clay Lake Farm since living there and produces a copy of the payments of Council tax payable from 2015 to 2020 that began on the 1st Nov 2015, a note on the bill states that the reason for sending it was 'Occupier Moved In'.

The applicant then submitted a further statement described as a 'supplementary and correction statement'. She says that before she had made her first sworn statement, she had not checked her facts, examined her own memory, or checked with her husband. She points out that the purchase was completed on the 7th April 2015 (the fee paid date on the land reg. document seems to corroborate that) and that they "moved in at that point" she does not specify a date and it is not clear whether that was their actual moving date. She provides evidence that in 2015 she began to be billed for water on the 17th April, gas from the 14th April and electricity from the 8th April.

The statement goes on to recount how, after the previous owners death in Feb 2013, his wife and family resolved to sell the property but his wife continued to live there until the sale and that she was there when the applicant visited to take measurements, and consider their planned improvements. The applicant says that when they moved in to the bungalow all of the previous owner's furniture and possessions had been removed, they moved into the property as soon as they were legally able and the previous occupant had moved out.

Officer Comments
The applicant's second statement was only provided with the revised account after the planning officer pointed out the applicant's current and existing breach of the planning condition had begun when they had moved in during 2015, less than 10 years prior, and that this was a fresh period of occupation and breach, rather than a continuation of the previous occupants breach, which had been immune for some time prior to the

sale of the property. The applicant wants to show that their occupancy began much sooner and that there was no break or period of inoccupancy between the previous owner moving out and them moving in.

However, there is no specific evidence to explain when the previous occupant had actually moved out to live elsewhere, it is said that her furniture and possessions had been removed, but there is no indication as to when this might of occurred.

There is a bit of an oddity relative to the differing accounts of their moving in date, in one account they began to live there in late autumn, before their first Christmas, and in the other it was mid spring, before their first summer- two very different times of year in terms of the weather and the memories that might be evoked. You might not necessarily expect a person to recall their precise moving date, although in the first statement the applicant is quite clear, but you would expect them to recall whether say, the weather was autumnal and they were soon preparing for Christmas, or the weather was warm and sunny and they enjoyed the garden.

In the first account the applicant can pinpoint the moving in date precisely and corroborate that with their Council tax bill. There is no such Council tax evidence to support the notion that they moved in on the 7th April. That is presumably because the property was registered as unoccupied until the 31st October 2015 and the applicant's limited property company was paying the Council tax in the interim.

The utility bills provided are not clearly indicative of occupation, there are a number of reasons why a person who is not yet living at a property might still want an electricity, water and gas supply.

Conclusions

Despite the applicant's efforts and the nature of their evidence, it is not readily accepted that two different periods of occupation, by two entirely separate households, can be considered as one combined single continuous breach, regardless of continuity or how little gap there might be between moving out and moving in dates. This is not an agreed point of law between the applicant and the Council. The preferred position is to consider a new period of occupation, that begins after a previous period of occupation ends, as a fresh and separate breach of the condition.

In any event, the totality of the evidence presented that might have assisted an exploration and careful consideration of that matter, became confused, contradictory, and lacked the necessary detail, clarity, and precision.

Definitively, based on a consideration of Council tax records, it is more than probable that the property was unoccupied from April and the 1st Nov 2015, during that period the previous breach and occupancy had been resolved and there was no longer a breach of the condition to be complained of. That is until the new period of occupancy began on the 1st Nov 2015.

The applicant's existing breach of the occupancy condition is not immune from enforcement action.

OFFICER RECOMMENDATION : REFUSE

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

X B.J. Haywood

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