DELEGATED DECISION REPORT

SMD/2020/0493 **Valid 10/09/2020**	**BROW NOOK FARM** **SCHOOL LANE** **FREEHAY** **CHEADLE**	**EXISTING CERTIFICATE OF LAWFULNESS FOR THE SITING OF RESIDENTIAL CARAVAN AND ASSOCIATED ENGINEERING AND BUILDING OPERATIONS** **(CERTIFICATE OF LAWFULNESS - EXISTING)**

MAIN ISSUES

Whether or not a residential caravan was placed at the site over ten years ago and used for the purpose of a residential caravan continually for at least ten years.

DESCRIPTION OF SITE

The site is within Brow Nook Farm, a farm (or former farm) with dwelling in the countryside about a mile to the south-east of Cheadle in the Freehay area. There are equestrian uses at the property and there are stables and a horse manege. It lies on the north-west side of School Lane and is surrounded by open land other than a dwelling and a church on the opposite side of the road. It is not in the Green Belt.

The site itself is a small square shaped piece of land between the dwelling to the south-east and a large modern agricultural storage building to the north-west and a horse manege to the south-west. It is further enclosed by an L-shaped hedgerow to the north-east and south-east, separating it from the house. Inside the site is a static caravan about 10m in length and also an adjacent gravel area with small shed and septic tank. Timber cladding has placed around the underside of the caravan and on part of the walls and there is a large metal flue connected to an internal log burner.

PROPOSAL

This is a Certificate of Existing Lawful Use application which seeks a certificate to confirm that the use of the site for the siting or a residential caravan and associated building and engineering works (laying of hardstanding, connection of septic tank, electricity connections, provision of wrap around cladding and erection of wooden shed) are lawful. There is no record of any planning permission being granted for the change of use of land and works so therefore this is deemed to be unauthorised as planning permission is required. However, Section 171B of the Town and Country Planning Act (as amended) states that unauthorised uses of land occurring for a period of at least ten years are immune from Enforcement Action and that

building works taking place more than four years ago would also be immune. Therefore the use and works would become lawful.

The onus is on the applicant to demonstrate/give evidence of the use having occurring continually for this length of time. If the Council does not have any evidence of its own to dispute the applicant's evidence, then, on the balance of probabilities if the Council considers the current use has continued uninterrupted for this period, the current use becomes lawful and a Certificate can be granted on that basis.

The relevant evidence provided by the applicant includes a sworn statement/statutory declaration from the owner of Brow Nook Farm (and the application site), dated 3.9.20, stating the following:

- The site was purchased by him in 1999
- In 2000 a hardstanding on the site was laid
- In 2005, works were undertaken to provide electricity and septic tank connections
- In 2006 a static caravan was placed on the site and linked up to the electricity and septic tank works and timber cladding placed around the base
- In 2008 the shed was provided and in 2018 a flue and additional cladding was also provided
- The owners son lived in the caravan from 2006 to 2015 continually
- From 2015, the owner's other son has lived in the caravan continually to the present day, moving in a few days after the first son left
- The site has not been used for any other purpose since first being used for the siting of a residential caravan

Photographs have also been provided.

A Planning Statement has been submitted by the agent which re-iterates some of the above information and argues the case for the grant of a certificate of lawfulness.

Further photographs of the inside of the caravan were provided by the owner in December 2020.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

N/A

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

No relevant applications. The only post 1980 planning applications relate to extensions and improvements to the dwelling.

CONSULTATIONS

Publicity

Site Notice expiry date: 5.11.20

Neighbour consultation period ends: 5.11.20
Press Advert: N/A

Public Comments

None.

Town / Parish Comments

No objection.

OFFICER COMMENTS

In order to achieve a certificate of lawfulness for an unauthorised use of land, in this case, the use of part of a farm/former farm and residential/equestrian property for the siting of a residential caravan (and associated works), the applicant must demonstrate a continual uninterrupted use for a continual period of at least ten years. If the Council has no evidence of its own to refute the applicant's evidence then if it considers on the balance of probabilities the use did continually occur for this period, without the intervention of enforcement action where it was possible to do so, then the certificate of lawful use should be issued. This is because Section 171B of the Town and Country Planning Act (as amended) states that unauthorised uses of land occurring for a period of at least ten years are immune from Enforcement Action.

The Planning Encyclopaedia also states that where an applicant's case is that the time for enforcement action has expired, the decision-maker must start with the date of the valid application and then consider the four or 10-year period (as the case may be) prior to that date.

The applicant has provided evidence in the form of a sworn statement (see comments in the Proposal section of the report, above), and photographs of the site including both outside of and around the caravan and also internal photo's.

The case officer also undertook a site visit and took photographs, in January 2021 and these aer consistent with the owner's submitted photo's. The caravan is still clearly lived in.

Aerial photo's from 2006 (the year the caravan is claimed to have been installed), 2011, 2015-2018 and 2020 clearly show the caravan placed on the site and with an adjacent hardstanding.

The Council's Legal Officer was consulted and on the basis of the evidence and photographs provided by the applicant and myself and records available to the Council, commented as follows:

"Mr Bagnall's evidence is the static has been in residential use by one or other of his sons since January 2006. The static is clearly now in use as a home. While the evidence re historical use amounts to no more than a bare assertion there is nothing to contradict it and we do know that the static has been there from the dates he says. Therefore I conclude on balance that residential use of the static is made out. If you

accept that the static and surrounding gravelled area have a residential use then I think it would be difficult (and rather pointless) to argue about the shed."

CONCLUSION / PLANNING BALANCE

On the balance of probabilities, it has been demonstrated that the application site has been used for the siting of a residential caravan for a continual period of at least ten years and is still in use for this purpose and that the associated works described by the applicant have been in place for over four years continually. The Council has no evidence in which to contradict the applicant's evidence. Therefore under S191 of the Town and Country Planning Act (as amended), the unauthorised change of use of land and associated works are immune from Enforcement Action and are now therefore lawful under the above Act. A certificate of an existing lawful use can therefore be granted for the siting of the static caravan and associated works.

OFFICER RECOMMENDATION : APPROVE GRANT OF CERTIFICATE

Case Officer: Chris Johnston
Recommendation Date: 25.3.21

X B.J. Haywood

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council