



Appeal Decision

Site visit made on 5 November 2025

by Sarah Dyer BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17TH November 2025

Appeal Ref: APP/F2605/X/24/3336916

The Old Mill, Road From Larling To Bridgham, Harling Road, Roudham, Norfolk NR16 2QW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Graeme Denham of Crendon Timber Engineering Ltd against the decision of Breckland Council.
 - The application ref 3PL/2023/0653/EU, dated 26 June 2023, was refused by notice dated 18 October 2023.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is provision of two timber storage buildings utilising the allowances (the) provided by Schedule 2, Part 7, Class H of the General Permitted Development Order 1995.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is found to be lawful.

Applications for costs

2. An application for an award of costs has been made against the Council. This is the subject of a separate decision.

Preliminary Matters

3. The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 (the Act) and sought a certificate in respect of existing building works. However, the appeal form refers to section 192 of the Act which relates to a certificate of lawfulness for a proposed development, and it is clear from the appeal submissions, and my site visit that the development which is referred to in the application has not been completed. For those reasons I have determined the appeal on the basis that the appellant seeks to establish that the proposed development, as a whole, is lawful.
4. For the avoidance of doubt, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Act, as amended, which relates to an application for a Certificate of Lawful Use or Development (LDC). My decision rests on the facts of the case and on relevant planning law and judicial authority. The onus is on the appellant to make out his case to the standard of the balance of probabilities.

5. The appellant requests that his reference to the 'General Permitted Development Order' in the description of the development for which the LDC was sought be corrected to 'Town and Country Planning Act (General Permitted Development) Order 2015' (the GDPO 2015). The Council considered the application against the GDPO 2015 which was the current version at the time, and I have determined the appeal on the same basis.

Main Issue

6. The main issue is whether or not the Council's decision to refuse the application was well-founded.

Reasons

7. The appellant is seeking to establish that the proposed development is the erection of two buildings and that it amounts to permitted development under Schedule 2, Part 7, Class H of the GPDO 2015 (Class H).
8. In order to constitute permitted development under Class H the proposed development must meet the limitations and conditions set out in that class. In this case, in the light of the submissions made by the parties, the starting point is to establish whether what is proposed constitutes a building.
9. The Council refers to the definition in the GDPO of a building, and it concludes that the proposed development does not constitute a building because it amounts to a means of enclosure which is specifically excluded from the definition. However, this approach does not address the totality of what is proposed i.e. the racking and the cladding. In the event that it is established that the racking constitutes a building then the cladding would be part and parcel of that structure.
10. It has been established by caselaw that three primary factors are decisive in establishing what is a building. These are size, permanence and physical attachment.
11. In terms of its size, the current racking is a substantial structure and the additional racking which is proposed will be larger in size. There is limited information regarding how the racking has been or will be constructed but given its scale it is reasonable to assume that it was not constructed off site and brought onto the site.
12. There is no evidence to suggest that there is any intention for the racking to be moved around the site. The current racking is attached to multiple concrete pads and the appellant states that the 'legs' are then shuttered with concrete up to fixing bolts to ensure stability. I was able to observe these features during the site visit and on this basis, it is reasonable to conclude that detaching the racks from the concrete pads and moving them elsewhere would be a significant and unlikely undertaking. As it stands the racking has a permanent effect on the character of the land. The proposed racking would be attached to and supported by shuttered concrete in the same way as the existing and similarly there is no indication that it would be moved around the site either.
13. The appellant refers to the racks being positioned on concrete pads. There is no evidence to suggest that these have foundations under the surface of the land. However the multiple fixing bolts and additional shuttering result in the racking having a significant degree of attachment to the ground via the multiple concrete pads. This would also be the case in respect of the proposed additional racking. In

any event it is noted in caselaw that the absence of a physical attachment is not in itself decisive.

14. I find that the racking, due to its substantial size, its permanent effect on the character of the land and the nature of and multiple points of attachment to the ground via the concrete pads, should be regarded as a building for planning purposes.
15. The inclusion of cladding to the racking, whilst not attached to the ground will be an integral part of the building as opposed to a means of enclosure. Thus the cladding does not result in the proposed development being excluded from the definition of a building under the GDPO 2015. Similarly, there is no evidence to suggest that the development would be excluded from this definition by virtue of amounting to plant or machinery.
16. The Council refers to the evolution of the design of the development which is the subject of the appeal. It highlights two previous planning applications, the first relating to the installation of racking (Council Ref. 3PL/2022/0875/F) and the second (Council Ref. 3PL/2022/1406/F) which concerned racking and the installation of cladding. However, these applications are not before me, and they have limited relevance in terms of the consideration of the lawfulness of the proposed development.
17. The Council also notes that the existing racking has been in situ for at least two years and on that basis, it disputes the appellant's reasoning that the cladding is proposed to help improve the conditions for the storage of timber and the impact of the weather. The appellant's response to this point is that the cladding has been delayed pending the outcome of this appeal to save any wasted expense. This is understandable and does not undermine the reasoning for the installation of cladding. In any event these comments relate to the merits of the development which again are not matters which are before me.
18. Turning to the limitations of Class H, the development would not lead to a reduction in the space available for parking or turning and it would not be within the curtilage of a listed building. Furthermore, the Council does not dispute the total floorspace calculation provided by the appellant which, at 143 square metres, is well within the 200 square metres limit that applies to this site and development.
19. There is an inconsistency in the site layout plans which are before me. Drawing number 28435/002 Rev C is annotated to describe the racking as '.....offset approximately 2m from the boundary line'. This plan is described as 'Site Block Plan, As Proposed' and is dated July 2022 (the 2022 plan). However, Drawing number 28435/SK01 Rev C, dated June 2023, which is described as 'Site Block Plan, HGV Tracking Route' shows a different site layout (the 2023 plan). The latter plan has the annotation '....End of racking offset 11.50m from eastern boundary...with 10.00m clearance between boundary line and timber storage'.
20. The submitted plans demonstrate that the existing racking is more than 10 metres from the boundary to the south. In respect of the boundary to the east there is an inconsistency between the 2022 plan and the 2023 plan as described above. However, the appellant's Planning Statement and Appeal Statement both set out that 'the (existing) racks have been reduced in length on the eastern gable end to bring it 10m away from the eastern boundary'. The Council considered both plans

when it made its determination. I have regarded the 2023 plan as superseding the 2022 plan given the dates of the revisions.

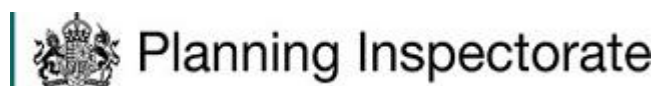
21. The 2023 plan shows that the buildings would not be within 5 metres of the boundary which is the limitation imposed by virtue of Class H (e).
22. Development is not permitted by Class H (c) if the height of any part of the new building would exceed 5 metres if within 10 metres of the boundary of the curtilage of the premises. In all other cases the height of the new building is limited to the height of the highest building within the curtilage of the premises or 15 metres whichever is the lower. The 2023 plan shows that none of the buildings will be within 10 metres of the boundary.
23. The submitted plans show that the racking is 5.2 metres high and the appellant states that the addition of the cladding to form a roof structure would increase the overall height to between 6 and 6.5 metres. This would not exceed the height of the highest building in the curtilage which is 12 metres high.
24. The onus is on the appellant to provide evidence which is unambiguous and precise. There is an inconsistency between the 2022 plan and the 2023 plan, however for the reasons set out above I have made my determination on the basis of the 2023 plan. For clarity, the reference to the 2022 plan can be omitted from the LDC in the event that the appeal is allowed and a certificate is issued.
25. On the basis of the information before me, the development meets the conditions of Class H.

Conclusion

26. In order to achieve success at appeal the appellant needed to show that the proposed development meets the requirements and conditions of Class H. The Council has reached a different conclusion in respect of whether the development constitutes a building and consequently it did not go on to consider the proposals against the restrictions and conditions of Class H. However, the appellant's evidence is sufficiently precise and unambiguous such that the balance of probability rests in his favour and it has been demonstrated that the proposed buildings constitute development which is permitted by Class H.
27. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for provision of two timber storage building utilising the allowances provided by Schedule 2, Part 7, Class H of the General Permitted Development Order 2015 is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Sarah Dyer

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 26 June 2023 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The provision of two timber storage buildings described on drawing numbers 28435/001 Rev A Site Location Plan, 28435/SK01 Rev C Site Block Plan, HGV Tracking Route, 28435/004 Rev A Type A Proposed Racking Layout Plan and Elevation, 28435/005 Rev 0 Type B Proposed Racking Layout Plan and Elevation and 28435/006 Rev 0 Site Section Thru Racking comply with Schedule 2, Part 7, Class H of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Sarah Dyer

Inspector

Date: 17th November 2025

Reference: APP/F2605/X/24/3336916

First Schedule

Provision of two timber storage buildings.

Second Schedule

The Old Mill, Road From Larling To Bridgham, Harling Road, Roudham,
Norfolk NR16 2QW

IMPORTANT NOTES – SEE OVER

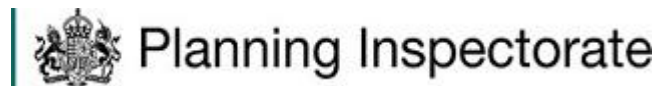
NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 17th November 2025

By Sarah Dyer BA BTP MRTPI

Land at: The Old Mill, Road From Larling To Bridgham, Harling Road, Roudham, Norfolk NR16 2QW

Reference: APP/F2605/X/24/3336916

Scale: Not to scale

