



Appeal Decision

Site visit made on 27 May 2026

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 May 2026

Appeal Ref: APP/Q9495/X/25/3376174

Plum Tree Cottage, Lyth, Kendal, LA8 8DD

- 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 Paul Goucher against the decision of Lake District National Park Authority.
 - The application ref 7/2025/5264, dated 27 May 2025, was refused by notice dated 14 August 2025.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is described as '*land adjacent to Plum Tree Cottage being used as a garden*'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that planning merits are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proof in respect of LDC applications made under section 191 of the Act lies with the applicant and the relevant test of the evidence is on the balance of probability.
3. The Planning Practice Guidance states if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Main Issue

4. The main issue is whether the Authority's decision to refuse to grant an LDC was well founded with particular regard as to whether on the date of the LDC application the red edged land shown on the location plan accompanying the LDC application was lawfully a garden.

Reasons

5. The appellant has included sales particulars of Plum Tree Cottage from 2017 which refers to the appeal land as forming part of the '*gardens*' of the property. The evidence is that appellant purchased the property in October 2017. There is a photograph of the land in the sales particulars which includes a bench on part of

the land (not all the appeal land is visible), some established trees and areas of grass which appear to have been mown. The appellant states that since this time the land has been used as a garden which he has maintained and including tree and shrub care, grass cutting and new planting. The appellant has included a signed letter from the occupier of a neighbouring property known as No. 1 Sibble Howe which states *'I have been living on the Row, Lyth for 24 years and can confirm that I am aware of the land to the rear of Plum Cottage....I have witnessed this area being used as a garden by the previous owners, and I am aware of its use as such for over 10 years'*.

6. The Authority maintains that as the land is 'overgrown' in the Google image dated 2009, it casts doubt about the use of the land as a garden at this time. There is certainly a visual difference in terms of the land at this time when compared to more recent images and photographs. Moreover, the Authority considers that as the land has included fruit trees, it remains a possibility that it may have been used as an orchard and hence could have been used for an agricultural use (i.e., an orchard) in accordance with the definition of agricultural as contained with section 336 of the Act. Such a definition includes *'horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly'* (my emphasis).
7. The LDC application was made on 27 May 2025. Given section 171(B) of the Act, it is necessary for the appellant to provide sufficiently precise and unambiguous evidence, on the balance of probability, to demonstrate a continuous and uninterrupted ten-year use of the land as a garden, i.e., from 27 May 2015 until 27 May 2025.
8. While the appellant states that the land has been maintained, grass cut, and ornamental planting, laurel edging and bark chipped areas provided since he occupied it from 2017, the evidence is not sufficiently precise and unambiguous in terms of demonstrating how the land has actually been used on a day to day or week to week basis for the alleged garden use. That said, and, on the balance of probability, I do find that both the visual and written evidence is such that it is more probable than not that the land has been used as a domestic garden from 2017 until 2025. That, however, does not equate to a continuous period of ten years use as a garden.
9. The evidence before 2017 is particularly scarce. The letter from the occupier of No. 1 Sibble House refers to the land being used as a garden by the previous owner, but there is a distinct absence of any precise evidence from the point of view of describing how the land was specifically used. The appellant's Google image from April 2009 does not provide any precise visual evidence to suggest that the land was likely to be in use as a garden. Between 2009 and 2017 there is a distinct lack of any photographs or any other images of the land. Moreover, I afford limited weight to the letter written by the occupier of No. 1 Sibble House because of its lack of precision, and because it does not have the sort of weight that one would associate with say a sworn statutory declaration.

10. For the above reasons, and, on the balance of probability I therefore find that the appellant's evidence is not sufficiently precise and unambiguous to demonstrate that on the date of the LDC application, the land had been continuously used as a garden for ten years. Consequently, I am unable to conclude that the land can lawfully be used as a garden and is immune from enforcement action.

Conclusion

11. For the reasons given above, I conclude that the Authority's refusal to grant a certificate of lawful use or development for use of the land as a garden is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

D Hartley

INSPECTOR