



Appeal Decision

Site visit made on 21 April 2026

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 June 2026

Appeal Ref: APP/U2750/X/25/3362750

Orchard House, South View, Hunton, North Yorkshire DL8 1QB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") against a refusal to grant a certificate of lawful use or development ("LDC").
 - The appeal is made by Mr & Mrs Paul Durban against the decision of North Yorkshire Council.
 - The application ref ZD24/00671/CLP, dated 25 November 2024, was refused by notice dated 21 January 2025.
 - The application was made under section 192(1)(b) of the 1990 Act.
 - The development for which an LDC is sought is: "Erection of outbuilding with associated levelling works (refer to submitted proposed plans)".
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed operation which is found to be lawful.

Preliminary Matter

2. Interested parties have submitted comments regarding the LDC. However, matters such as flooding and the planning history of the site fall outside the scope of this appeal which rests on the facts of the case and the interpretation of any relevant planning law or judicial authority.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC for the proposed erection of an outbuilding with associated levelling works was well-founded.

Reasons

4. For an LDC to be granted under s192 of the 1990 Act, it is necessary for the appellants to demonstrate, on the balance of probability, that the use or operations described would have been lawful on the date of the application having regard to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO").
5. The description of the development is two-fold: (i) excavation works to level the site, and (ii) the construction of an outbuilding under Class E of Part 1, Schedule 2 of the GPDO.

Excavations

6. I must consider whether the excavations are, as a matter of fact and degree, operations that fall within Class E of Part 1, Schedule 2 of the GPDO.

7. The garden to the rear of the property slopes down from north to south and from east to west. I saw during my site visit that excavations had taken place to the ground beneath and to the front of where the proposed outbuilding would be sited. The Council state that the excavations have a maximum depth of 1.1m, which has not been disputed by the appellants. However, the excavations vary in depth due to the ground's undulating nature and the 1.1m deep excavations are limited in extent.
8. I acknowledge that excavated material was likely removed from the land; the natural ground level was not levelled by "cut and fill"; and the excavated area extends beyond the footprint of the proposed outbuilding. However, I am satisfied from the evidence before me that the excavation works are required to create a level surface to construct the proposed outbuilding and to allow vehicle access to be obtained from an existing area of hardstanding into the garage within the proposed outbuilding.
9. On the evidence before me, I find that the excavation works that have been carried out are, as a matter of fact and degree, incidental and integral to the erection of the proposed outbuilding. Therefore, they are permitted development within Class E of Part 1, Schedule 2 of the GPDO.
10. The Council has directed me to an appeal decision¹ to support their assertion that excavation works fall outside the scope of Class E of Part 1, Schedule 2 of the GPDO. I have not been provided drawings showing the extent of the excavation works. However, the Inspector states, *"the whole of the lower tier of the garden has been removed across the width of the garden, and the second tier appears to have been lowered and leveled [sic]. In addition, large retaining walls have been built to the sides of the garden and at the new change in level..."*. The Inspector also describes the removal of *"substantial amounts of soil"*. Consequently, the appeal decision is not directly comparable to this LDC, and in any event, I must determine each case on its own merits.

Outbuilding

11. Class E of Part 1, Schedule 2 of the GPDO permits the construction of buildings etc incidental to the enjoyment of a dwellinghouse. The matter in dispute between the main appeal parties is whether the proposal would comply with limitation E.1(e)(ii) which states, *"Development is not permitted by Class E if the height of the building, enclosure or container would exceed 2.5 metres...within 2 metres of the boundary of the curtilage of the dwellinghouse"*.
12. There is no dispute between the main appeal parties that the proposed outbuilding would be sited within 2 metres of the boundary of the curtilage of the dwellinghouse. However, there is disagreement regarding how the proposed outbuilding's height should be measured. The Council consider the height should be measured from the excavated ground level, where-as the appellants consider that it should be measured from the ground adjacent to it.
13. Article 2(2) of the GPDO makes it clear that heights are to be measured from ground level, and that ground level is the ground immediately adjacent to the building in question. Where the ground level is not uniform, such as on sloping land as is the case with the appeal site, ground level is to be taken to mean the highest

¹ Appeal Ref APP/D1780/C/11/2148700 & 2148701

part of the surface of the ground next to the building. Consequently, I consider the appellants' assertion to be correct.

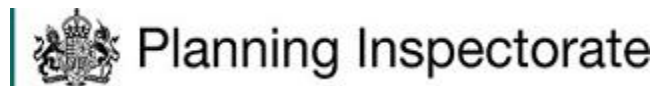
14. The Council states that the proposed outbuilding would be 1.6m in height when measured from the highest part of the ground adjacent to it. This measurement has not been disputed by the appellants, and I have nothing before me to come to a different view. Consequently, the proposed outbuilding's height would be within the tolerances permitted under Class E of Part 1, Schedule 2 of the GPDO.
15. The Council considers the proposed outbuilding accords with all other limitations within Class E of Part 1, Schedule 2 of the GPDO. From the information before me, I have no reason to disagree with the Council's assertion on this matter.

Conclusion

16. Taking these factors together, on the balance of probability, I find that the proposal would be development permitted by Class E of Part 1, Schedule 2 of the GPDO.
17. I therefore conclude that the Council's refusal to grant an LDC for the erection of an outbuilding with associated levelling works is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in s195(2) of the 1990 Act.

A Berry

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 25 November 2024 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:

- It would be development permitted by Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Signed

A Berry

INSPECTOR

Date: **03 June 2026**

Reference: APP/U2750/X/25/3362750

First Schedule

Erection of outbuilding with associated levelling works (refer to submitted proposed plans)

Second Schedule

Land at Orchard House, South View, Hunton, North Yorkshire DL8 1QB

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 this decision dated: **03 June 2026**

by **A Berry**

Land at: **Orchard House, South View, Hunton, North Yorkshire DL8 1QB**

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Scale: Not to Scale

