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APPEAL STATEMENT

ADDRESS:

Water Tower
Roe House Lane
Norton Juxta Twycross

PROJECT:

Certificate of existing lawful development to seek approval for the use of water tower as use Class B8 (Storage and Distribution)

CLIENT NAME:

Mr Matthew Thompson

DATE OF ISSUE:

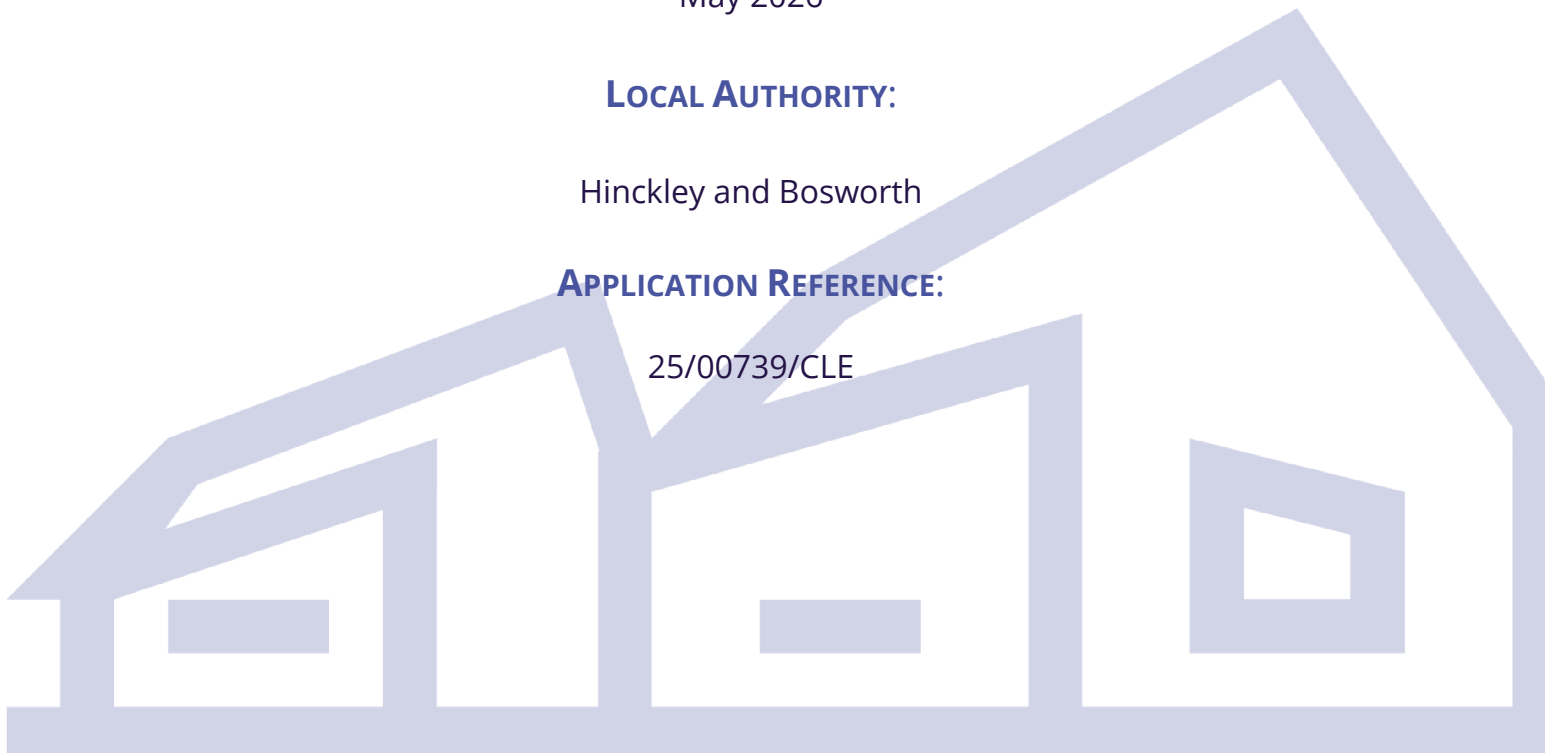
May 2026

LOCAL AUTHORITY:

Hinckley and Bosworth

APPLICATION REFERENCE:

25/00739/CLE





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1.0 INTRODUCTION AND BACKGROUND

- 1.1 The appeal arises from the decision of Hinckley and Bosworth Borough Council to refuse application 25/00739/CLE in relation to a proposal for a certificate of existing lawful development to seek approval for the use of water tower as use Class B8 (Storage and Distribution) at Water Tower, Roe House Lane, Norton Juxta Twycross. The application was refused on 09 April 2026 (copy of the decision notice is included in Appendix 1) for the following reasons:

1. The information included in this application for a Certificate of Lawful Existing Use would not sufficiently, precisely and unambiguously demonstrate that, on the balance of probabilities, the water tower at Water Tower, Roe House Lane, Norton Juxta Twycross would benefit from a Use Class B8 use.

- 1.2 This statement describes the appeal site and the proposal, details the planning history of the site, identifies the planning policy considerations that apply to the proposal, provides an assessment and justification in relation to the appellant's case, and finally, provides a conclusion in respect of this appeal.



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2.0 APPEAL SITE

- 2.1 The application site is located within the designated open countryside, approximately 1.5km to the north-west of Norton Juxta Twycross and approximately 500m to the south-east of the M42.
- 2.2 The site comprises a disused water tower, approximately 17 metres in height, together with its associated compound. The compound is enclosed by mature trees and sections of poorly maintained hedging and fencing, which limit wider public views into the site. With the exception of the Hill Farm complex to the south, the site is otherwise surrounded by open countryside.
- 2.3 Save for the vehicular access to the site via Roe House Lane to the north-west, the application site falls wholly within the administrative area of Hinckley and Bosworth Borough Council. The site lies close to the boundaries with North West Leicestershire District Council to the north and North Warwickshire Borough Council to the east.
- 2.4 To the north-west of the site, Roe House Lane extends towards Austrey Road and Appleby Hill. Beyond the site, the lane is split almost equally between the two neighbouring authorities. Roe House Lane is designated as a restricted byway (Q4A), although it is open to all traffic only between the application site and Austrey Road and Appleby Hill.
- 2.5 The appeal proposal relates to the redundant water tower and its associated compound. The tower itself is approximately 17 metres in height and occupies an



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elevated position on a ridge, set within a small copse of mature trees and adjacent to a group of farm buildings.

- 2.6 The surrounding countryside is characterised by a generally open rural landscape, punctuated by occasional groups of trees, individual field trees and hedgerows along field boundaries. The wider area contains a number of small villages, hamlets and sporadically dispersed individual properties. Overall, the locality has a quiet and distinctly rural character, with very limited urbanising influences such as dwellings, street lighting or other built development. As a consequence, the area is experienced as having a notably dark character during the night-time. These characteristics contribute positively to the rural quality and appearance of the area. Against this backdrop, the existing water tower, by reason of its scale, height and utilitarian form, appears as a visually prominent and somewhat incongruous feature within the landscape. Figure 1 below shows photographs of the water tower and the surrounding area:



Figure 1 - Site photographs



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3.0 PLANNING HISTORY

- 3.1 It is understood that the most recent and relevant planning history of the site is as follows:

23/01176/FUL - Conversion of existing water tower to residential dwelling with associated parking, landscaping, access improvements and other works. Refused on 30.01.2024. Appeal dismissed on 23.08.2024.





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4.0 PROPOSED DEVELOPMENT

- 4.1 The proposed development relates to an application for a Lawful Development Certificate for an existing use to confirm, on the balance of probabilities, that the existing water tower ('Austrey Water Tower') at Roe House Lane, Norton Juxta Twycross has been utilised as a storage and distribution (Use Class B8) use for a continuous period of ten years.
- 4.2 The site comprises a disused water tower and associated compound accessed from Roe House Lane. It is currently used for the storage of intermediate bulk containers (IBCs) of molasses—both full and empty—as well as materials associated with ongoing site maintenance and distillery operations.
- 4.3 During the course of the application, the proposal was amended so that the certificate related solely to the water tower and not to any of the surrounding land, as shown by the site location plan re-produced in Figure 2:

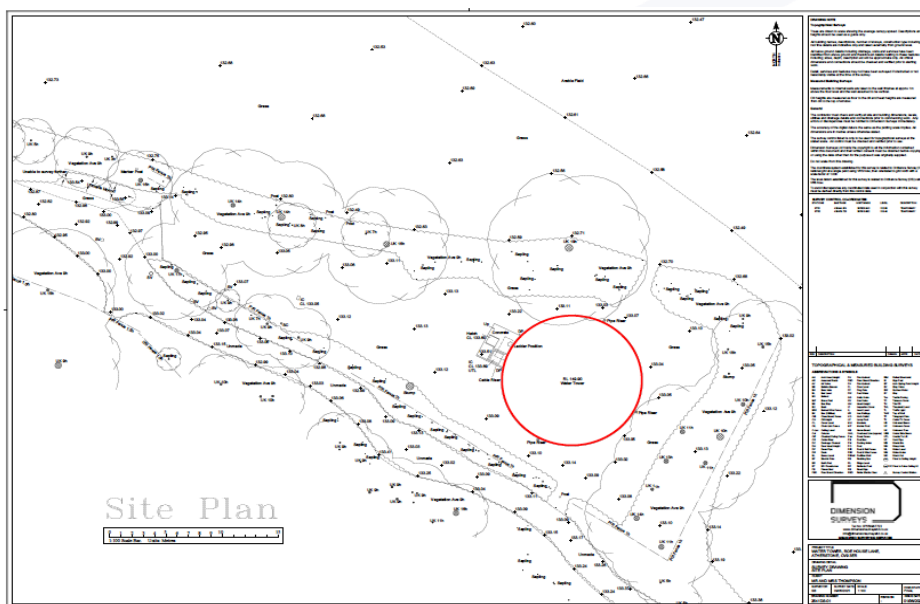


Figure 2 - Site location plan



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5.0 LEGISLATIVE BACKGROUND

5.1 Anyone may apply to the local planning authority for a decision as to whether an existing use or development is lawful for planning purposes. If the local planning authority is satisfied that the relevant legal tests have been met, it must issue a certificate to that effect. The key statutory framework for such applications is set out in sections 191–193 of the Town and Country Planning Act 1990 (“the 1990 Act”).

5.2 Section 191 of the 1990 Act provides that, if any person wishes to ascertain whether:

(a) any existing use of buildings or other land; or

(b) any operations which have been carried out in, on, over or under land,

are lawful, they may make an application for that purpose to the local planning authority specifying the land and describing the use, operations or other matter.

5.3 Section 191(2) of the 1990 Act provides that uses and operations are lawful at any time if:

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission, or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any enforcement notice then in force.



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- 5.4 Section 191(4) of the 1990 Act provides that, if on an application under section 191 the local planning authority is provided with information satisfying it of the lawfulness, at the time of the application, of the use, operations or other matter described in the application, it shall issue a certificate to that effect.
- 5.5 In determining an application under section 191, planning merits and development plan policies are not relevant. The issue is not whether the use or development ought to be granted planning permission, but whether the evidence demonstrates, on the balance of probabilities, that the use or operations described in the application are lawful.
- 5.6 The Planning Practice Guidance confirms that the purpose of a lawful development certificate is to provide certainty as to the lawfulness of existing or proposed uses or operations. In the context of an application under section 191, the local planning authority must have regard to the facts of the case and the evidence available at the date of the application in order to determine whether the use or operations described are lawful.
- 5.7 The Planning Practice Guidance further confirms that the burden of proof in an application for a certificate of lawfulness rests with the applicant. However, the relevant test is the civil standard of proof. The question is whether the evidence, taken as a whole, demonstrates on the balance of probabilities that the existing use described in the application is lawful. Where the local planning authority has no evidence of its own to contradict the applicant's evidence, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate.



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6.0 THE APPELLANTS CASE

- 6.1 The appeal relates to an application made under section 191 of the Town and Country Planning Act 1990 seeking a Certificate of Lawfulness in respect of the existing use of the water tower at Roe House Lane, Norton Juxta Twycross as a Use Class B8 (Storage and Distribution) use. The Council refused the application on the basis that the information submitted did not sufficiently, precisely and unambiguously demonstrate, on the balance of probabilities, that the water tower benefits from a Class B8 use.
- 6.2 It is important at the outset to identify the correct legal approach to the determination of this appeal. As the Council correctly acknowledges in its delegated report, the only question for the Inspector is whether, on the facts of the case and the relevant planning law, the use described in the application is lawful. Planning merits are not relevant to the determination of an application for a Certificate of Lawfulness and matters such as highway impact, countryside protection, visual impact or amenity do not form part of the legal assessment.
- 6.3 It is accepted that the burden of proof rests on the appellant. However, the relevant test is not one of absolute certainty. The question is whether the evidence, taken as a whole, demonstrates on the **balance of probabilities** that the use described in the application is lawful. The Planning Practice Guidance is clear that, where the local planning authority has no evidence of its own to contradict the applicant's case, there is no good reason to refuse an application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities. The Council expressly cites this legal test within its own delegated report.



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The principal issue: whether a water tower is properly characterised as a Class B8 use

- 6.4 The central issue in dispute is not one of planning judgment, but one of proper legal characterisation. The Council's case is that a "water storage tank" falls within Use Class B8, but that a "water tower" should be treated differently and as a sui generis use because the Land Use Gazetteer identifies water towers in that way. The appellant respectfully submits that this approach is overly rigid, unsupported by any statutory definition and fails to properly engage with the actual planning purpose and function of the structure.
- 6.5 Use Class B8 within the Town and Country Planning (Use Classes) Order refers to "storage or distribution". On any ordinary and natural reading, the historic and inherent function of a water tower is the storage of water. In ordinary dictionary terms, a water tower is a tall structure with a tank of water at the top from which water is supplied to buildings in the surrounding area. The fact that the stored water is held at height in order to create pressure within a wider distribution network does not alter the fact that the structure is fundamentally and necessarily a storage structure. The Council's attempt to distinguish between "water storage tanks" and "water towers" is artificial. A water tower is, in substance, a water storage structure elevated on a supporting frame or shaft.
- 6.6 The officer report accepts that water towers typically contain a water storage tank but then seeks to argue that the tower's role in maintaining pressure means that the use somehow "goes beyond" storage and therefore falls outside Use Class B8. That position is not accepted. Many B8 uses exist within wider operational systems or supply chains, but that does not prevent the relevant use from still



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being properly characterised as storage. The question is not whether the structure performs a wider utility function in an engineering sense; the question is how the planning use of the structure is properly characterised. In this case, the dominant and defining characteristic of the structure is the storage of water as confirmed by ordinary dictionary definition of a water tower.

- 6.7 The Council's approach places substantial and determinative weight on a generic Land Use Gazetteer entry. The Gazetteer is not statute, does not override the Use Classes Order, and cannot displace the need for a detailed and factual assessment of the planning character of the use in question. At best, it is a potentially relevant reference tool but should not be regarded as conclusive. The appellant submits that the Council erred by treating it as effectively determinative, rather than as one piece of background material to be weighed against the broader evidence and the proper interpretation of the Use Classes Order.

Comparable decisions and supporting material

- 6.8 The application was supported by appeal decisions and other examples demonstrating that water storage infrastructure has repeatedly been treated as falling within Use Class B8. The Council seeks to distinguish those examples on the basis that they involve reservoirs, service reservoirs or water storage tanks rather than an above-ground water tower. However, the underlying principle remains highly relevant: planning Inspectors have accepted that dedicated water storage infrastructure is capable of falling within Use Class B8.
- 6.9 In particular, appeal decision 3194959 (see Appendix 3) relating to Whiddon Service Reservoir is highly relevant. In that case, the local planning authority had



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initially argued that the storage of water was not a B8 use in its own right, but rather a use ancillary to the wider distribution network and therefore sui generis. Significantly, the Inspector's decision notes that the Council subsequently withdrew that position following counsel's advice on a separate case, accepting that the storage of water was properly capable of falling within Use Class B8 and noting that there is nothing within the Use Classes Order which distinguishes between water storage as an ancillary function and water storage as a use in its own right. That reasoning is directly analogous to the present case and materially undermines the Council's attempt here to argue that the water tower falls outside Class B8.

- 6.10 In addition, the appellant provided the Council with appeal decision 3341280 at Maders Reservoir (see Appendix 4). Whilst that appeal was ultimately dismissed for unrelated GPDO limitation reasons, the Inspector expressly recorded that the reservoir fell within Use Class B8 and noted that the appellant had referred to the Land Use Gazetteer as confirming that a water storage tank is a B8 use. The significance of that decision is not that it concerns an identical structure, but that it further confirms the broader proposition that dedicated water storage infrastructure is capable of being lawfully characterised as B8.
- 6.11 The appellant also provided evidence of the Torridge District Council example, which involved an above-ground water tower that was treated as benefitting from a B8 use. The Council did not identify any principled reason why that example was wrong but merely stated to say that the full evidential basis was not publicly available and that each case turns on its own facts. That is not a sufficient basis to disregard it entirely. In fact, Torridge District Council's planning register includes the submitted supporting statement for that case, which records that the



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former water tower had a long-established Class B8 use and expressly states that Torridge District Council had already confirmed in writing, through pre-application enquiry ref. FPE/0454/2017, that the use of the building fell within Class B8. It therefore provides a directly comparable above-ground example which further undermines the Council's suggestion that water towers must necessarily be treated as sui generis.

- 6.12 Moreover, the Council's own internal and pre-application correspondence demonstrates that even its own officers did not regard a B8 classification as untenable. In January 2026, the Council's Senior Planning Officer expressly stated that *"it is not an unreasonable starting point to suggest that the water tower may represent a Use Class B8 use"* (see Appendix 5). That is a significant concession and it demonstrates that the Council itself accepted that B8 is, at the very least, a credible and legally arguable characterisation of the use.

Previous description of the site and absence of any contrary formal determination

- 6.13 A further relevant matter is that, as the appellant highlighted during the application process, the previous planning application at the site (23/01176/FUL) expressly described the water tower as comprising existing B8 floorspace. No issue appears to have been raised by the Local Planning Authority during the determination of that application, nor by the Planning Inspectorate as part of the subsequent appeal. The appellant fully accepts that this does not amount to a formal determination of lawfulness and is not conclusive. However, it is plainly relevant contextual evidence that the site has previously been understood and described, without objection, as benefiting from a B8 use.



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- 6.14 The Council's correspondence did not meaningfully engage with that point. Instead, the Council merely stated that the former Team Leader did not expressly confirm in writing that the site benefitted from a B8 use. Nevertheless, the relevance of the previous application is not that it constituted a formal legal ruling, but that it provides additional evidence that the B8 characterisation is not novel, contrived or implausible. It forms part of the wider evidential picture and supports the appellant's case on the balance of probabilities.

The amendment to the application removes the Council's earlier concern regarding the wider site

- 6.15 The Council's earlier concerns repeatedly focused on the inclusion of the wider land surrounding the tower. In response to those concerns, the appellant amended the application so that it relates solely to the water tower itself. The delegated report expressly records that the wider land was removed from the application following the Council's requests for further information.
- 6.16 That amendment is significant as it means that the appeal no longer turns on whether the surrounding compound or wider land might have been subject to a different or intensified form of external storage use. The sole question is now whether the water tower itself benefits from a lawful Class B8 use. This materially narrows the issue and removes much of the force from the Council's earlier attempts to distinguish the appellant's evidence by reference to differences in red line boundaries or wider planning units. Indeed, the appellant expressly made this point to the Council in correspondence when submitting the amended plan.



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- 6.17 In those circumstances, the Council's continued reliance on earlier concerns regarding the wider site carries limited weight. Given that the application was amended, the Inspector is able to determine the appeal by reference to the structure itself and its proper planning characterisation. The Council has not produced any positive evidence that the use does not fall within a B8 classification.
- 6.18 The refusal reason does not identify any alternative lawful use that has been positively established by evidence. Nor does the Council point to any statutory provision, binding authority or site-specific factual material which demonstrates that the use must be treated as sui generis. Rather, the refusal is based on the proposition that the appellant has not done enough to overcome the Council's concern arising from the Land Use Gazetteer and the perceived distinction between water towers and water storage tanks.
- 6.19 This is not a case where the Council has provided affirmative evidence of an established alternative use, or where there is conflicting direct factual evidence as to the historic use of the structure. Instead, the Council's position is essentially that the appellant's evidence is not sufficiently compelling. In the appellant's submission, that sets the bar too high and approaches the matter as if absolute certainty were required, which is clearly not the required legal test.
- 6.20 When the evidence is viewed fairly and in the round, the following matters are established:
1. The structure is, by its very nature, a dedicated water storage structure;
 2. The ordinary and dominant planning character of that use is storage;



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3. Comparable appeal decisions support the proposition that water storage infrastructure falls within Use Class B8;
4. An above-ground water tower example from Torridge District Council supports the same conclusion;
5. The Council itself has acknowledged that B8 is a reasonable starting point; and
6. The site has previously been described in formal planning submissions as comprising B8 floorspace without objection.

6.21 Taken together, that body of evidence comfortably establishes, on the balance of probabilities, that the water tower benefits from a Class B8 use.

Overall conclusion on the main issue

6.22 The appellant accepts that a Certificate of Lawfulness application requires careful and precise evidence. However, the statutory test is not whether every conceivable alternative characterisation can be ruled out beyond doubt. The test is whether the evidence demonstrates, on the balance of probabilities, that the use described in the application is lawful.

6.23 In this case, the Council has elevated a generic Land Use Gazetteer label above the actual wording of the Use Classes Order, the inherent functional character of the structure, relevant comparable decisions, and the broader factual context. That approach is overly formalistic and does not reflect the proper legal exercise required under section 191.

6.24 For the reasons set out above, the appellant submits that the water tower is properly characterised as a Use Class B8 (Storage and Distribution) use and that



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the evidence before the Inspector is sufficiently precise and unambiguous to justify the grant of a Certificate of Lawfulness on the balance of probabilities. The Council's refusal was therefore not well founded.





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7.0 CONCLUSIONS

- 7.1 This appeal relates to a Certificate of Lawfulness application made under section 191 of the Town and Country Planning Act 1990. The only issue for the Inspector is whether, on the balance of probabilities, the evidence demonstrates that the existing use of the water tower at Roe House Lane, Norton Juxta Twycross is lawful as a Use Class B8 (Storage and Distribution) use.
- 7.2 The appellant has provided a clear and coherent evidential case demonstrating that the water tower is, by its very nature, a dedicated storage structure. In ordinary terms, a water tower is a structure designed to store water, with its elevated form serving the operational purpose of distribution through pressure. That wider engineering function does not alter the essential planning character of the structure as one properly characterised as storage and distribution. The Council's attempt to draw a rigid distinction between a "water storage tank" and a "water tower" is unsupported by any statutory definition and places undue reliance on a non-statutory Land Use Gazetteer classification.
- 7.3 The evidence before the Inspector includes relevant comparable appeal material and a directly comparable example from Torridge District Council, where an above-ground water tower was expressly treated as falling within Class B8. The appellant has also highlighted that the Council's own officers accepted during pre-application discussions that it was not unreasonable to consider the water tower as potentially falling within Use Class B8. In addition, the site has previously been described in formal planning submissions as comprising B8 floorspace without objection. Taken together, that evidence provides a consistent and credible basis



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for concluding that the B8 characterisation is not only reasonably arguable but is the correct one on the balance of probabilities.

- 7.4 The Council has not identified any statutory provision, binding authority or affirmative site-specific evidence which demonstrates that the water tower must be treated as sui generis. Nor has it positively established any alternative lawful use. Instead, the refusal is based largely on a generic classification tool and a perceived distinction which is artificial in planning terms. That is not sufficient to displace the appellant's evidence when assessed against the correct legal test under section 191.
- 7.5 For all of the reasons set out in this appeal statement, the appellant respectfully submits that the evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the water tower at Roe House Lane, Norton Juxta Twycross benefits from an existing lawful Use Class B8 (storage and distribution) use. The Council's refusal was therefore not well founded, and the Inspector is respectfully requested to allow the appeal and issue a Certificate of Lawfulness accordingly.



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8.0 APPENDICES

Appendix 1 25/00739/CLE decision notice

Hinckley & Bosworth Borough Council

Town and Country Planning Act 1990

REFUSAL OF CERTIFICATE OF LAWFUL EXISTING USE

Name and Address of Applicant

Mr Matthew Thompson
16 Trent Bridge
Coalville
Leicestershire
LE67 4EE

Name and Address of Agent (if any)

Part I - Particulars of Application

Date of Application

29 July 2025

Application No.

25/00739/CLE

Particulars and location of development:

Certificate of existing lawful development to seek approval for the use of water tower as use Class B8 (Storage and Distribution)

Water Tower Roe House Lane Norton Juxta Twycross Leicestershire

Part II - Particulars of decision

In pursuance of its powers under Section 191 of the Town and Country Planning Act 1990 as substituted by Section 10 of the Planning and Compensation Act 1991, Hinckley and Bosworth Borough Council hereby refuses to issue a Certificate of Lawful Existing Use in respect of the use referred to in Part I above for the following reason(s):-

The information included in this application for a Certificate of Lawful Existing Use would not sufficiently, precisely and unambiguously demonstrate that, on the balance of probabilities, the water tower at Water Tower, Roe House Lane, Norton Juxta Twycross would benefit from a Use Class B8 use.

C. Brown.

Christopher Brown MRTPI
Head of Planning

Date : 09 April 2026

IMPORTANT – PLEASE READ THE NOTES AT THE END OF THIS DOCUMENT

25/00739/CLE

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RECLEZ





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Appendix 2 25/00739/CLE officer report

Delegated Report

Planning Reference 25/00739/CLE

Applicant Mr Matthew Thompson

Ward Twycross, Sheepy & Witherley



Hinckley & Bosworth
Borough Council

Application Site Water Tower, Roe House Lane, Norton Juxta Twycross

Proposal Certificate of existing lawful development to seek approval for the use of water tower as use Class B8 (Storage and Distribution)

1. Recommendations

1.1. Refuse Certificate of Lawful Existing Use

2. Planning Application Description

2.1. This is an application for a Lawful Development Certificate for an existing use to confirm, on the balance of probabilities, that the existing water tower ('Austrey Water Tower') at Roe House Lane, Norton Juxta Twycross have been utilised as a storage and distribution (Use Class B8) use for a continuous period of ten years.

2.2. Following concerns raised by and additional information requests from the Local Planning Authority on 09 January 2026, 16 January 2026, and 19 March 2026, the Applicant removed the wider land surrounding the water tower from the application.

2.3. The following documents/information have been submitted to support the application:

- Appeal Decision (Maders Reservoir, Callington)
- Application Form
- Site Plan (2541DS-01)
- Supporting Statement, Information and Images
- Torridge District Council Report and Decision

3. Description of the Site and the Surrounding Area

3.1. The application site is situated in the designated open countryside approximately 1.5km northwest of Norton Juxta Twycross and 500m southeast of the M42.

3.2. The application site comprises a 17m high disused water tower and its associated compound that is bounded by mature trees and poorly maintained hedging and fencing, which limits wider public views into the site. With the exception of the Hill Farm complex to the south of the site, the site is wholly surrounded by open countryside.

Hinckley & Bosworth Borough Council

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Water Tower, Roe House Lane, Norton Juxta Twycross

3.3. With the exception of the vehicular access to the site via Roe House Lane to the northwest, the application site is wholly within the jurisdiction of Hinckley and Bosworth Borough Council. The site lies on the border of North West Leicestershire District Council to the north and the North Warwickshire Borough Council to the east.

3.4. As it heads northwest beyond the site towards Austrey Road and Appleby Hill, Roe House Lane is split almost equally between the two neighbouring authorities. Roe House Lane is a restricted byway (Q4A) that is only open to all traffic between the application site and Austrey Road and Appleby Hill.

4. Relevant Planning History

4.1 24/00014/PP

- Erection of one new dwelling and detached garage with associated access
- Appeal Dismissed
- 23.08.2024

4.2 23/01176/FUL

- Conversion of existing water tower to residential dwelling with associated parking, landscaping, access improvements and other works
- Refused
- 30.01.2024

5. Publicity

5.1. The application is for a Certificate of Lawful Existing Use and no publicity is necessary. Nevertheless, a site notice was posted within the vicinity of the site.

5.2. One member of the public responded and objected to the application due to highway safety concerns along the restricted byway, harm to the character of the surrounding area and the designated open countryside, the unsustainable location of the development, and its harm to neighbouring residential amenity as a result of noise and disturbance and odours.

5.3. No further responses have been received.

6. Consultation

6.1. The application is for a Certificate of Lawful Existing Use and no consultation is necessary.

6.2. However, Leicestershire County Council as the Local Highway Authority responded to the application and did not consider the submitted details to fully assess the highway impact of the development.

Hinckley & Bosworth Borough Council

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Case Officer Note: *Although the application does not fully assess the highway impact of the development, the Applicant has not sought planning permission for their scheme. National Planning Practice Guidance confirms that planning matters would not be considered to represent material considerations within the determination of a Lawful Development Certificate application such as this.*

7. Policy

- 7.1. Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), and Section 191 of the Town and Country Planning Act 1990, as amended by Section 10 of the Planning Compensation Act 1991, provide advice and guidance in respect for applications for Certificates of Lawfulness of Existing Use.
- 7.2. Planning Practise Guidance confirms that the Applicant is responsible for providing sufficient information to support the application and that such evidence should be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

8. Appraisal

- 8.1. Planning Practice Guidance confirms that a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.
- 8.2. The key issue for consideration is whether the existing water tower in question has been used continuously for a storage and distribution (Use Class B8) use for a continuous period of ten years or more from the date of the submission of this application on 29 July 2025.
- 8.3. In applications such as this, if the Local Planning Authority has no evidence itself to contradict or otherwise make the Applicant's version of events less than probable, there is no good reason to refuse the application, provided that the Applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities. As confirmed by the Planning Practice Guidance, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented to the Local Planning Authority. It is against this legislative framework that the application is assessed.
- 8.4. A Use Class B8 use is defined by the Town and Country Planning (Use Classes) Order 1987 (as amended) ('Use Classes Order') as a development used for storage or as a distribution centre. Sui Generis uses represent planning uses that do not fall within the defined use classes within the Use Class Order.
- 8.5. The Third Edition of Volume 1 of the Land Use Gazetteer by Stephen Godgree and Leaf Coppin Publishing Ltd (2005) ('Land Use Gazetteer'), states that the use of a water tower is a Sui Generis use.

Hinckley & Bosworth Borough Council

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- 8.6. Whilst it is acknowledged that the Land Use Gazetteer was published twenty years ago and is likely to be out of date, the purpose and use of a water tower have not changed in this time. The Land Use Gazetteer therefore provides a useful starting point that suggests that on the balance of probabilities the use of the application site and the water tower would not be considered to represent a Use Class B8 use.
- 8.7. To justify their proposal, the Supporting Statement refers to two recently approved Lawful Development Certificate applications within the Borough at Help Out Mill on Shackerstone Lane (25/00185/CLE) for the conversion of outbuildings to two dwellings and at The Oaks on Kirkby Lane in Newbold Verdon (25/00219/CLE), which was for the use of agricultural land and various outbuildings for residential use.
- 8.8. As neither of these previous developments would relate to Use Class B8 uses nor water towers, these applications would not be considered to be relevant within the determination of this current scheme in these site-specific circumstances.
- 8.9. The Supporting Statement also highlights that the Application Form for planning application 23/01176/FUL suggested that the application site benefited from a Use Class B8 use and neither the Delegated Officer Report, nor the Appeal Decision queried this.
- 8.10. Whilst neither document refutes that the application site could be within a Use Class B8 use, neither document refers to the use classification for the site, nor do they confirm that the use of the site would represent a Use Class B8 use.
- 8.11. The proposal within 23/01176/FUL was for the residential conversion of the water tower, which was dismissed at appeal due to the unsustainable location of the scheme and the harmful impact of the proposed works upon the character of the surrounding area. Therefore, the use classification of the application site, beyond it not being currently in residential use, was not considered to be relevant within the determination of that particular development. Ultimately, if the use classification of the application site of the site was important in the determination of 23/01176/FUL, this would have been addressed by the Inspector and within the Delegated Officer Report. This position accords with the informal officer advice given to the Applicant on 02 July 2025 as detailed within the submitted Supporting Information.
- 8.12. Given the above, the absence of any reference to the classification of the use of the application site within the determination of 23/01176/FUL would not be considered to sufficiently, precisely, and unambiguously that the use of the application site would represent a Use Class B8 use on the balance of probabilities.
- 8.13. Section 2 of the Supporting Statement then refers to three relevant planning appeals at Ham Lane Reservoir in Somerset (APP/F9498/W/15/3134763), Whiddon Reservoir in Barnstaple (APP/X1118/W/18/3194959) and Land north of Shameface Lane in Bovey Tracey (APP/P1133/W/16/3163943).

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- 8.14. The appeal at Shameface Lane was for the change of use of a Use Class B8 utilitarian storage building to a residential use. Paragraph 3 of the statutory declaration submitted to Teignbridge District Council as part of the determination the originally refused application 16/02427/NPA stated that the property had been continuously used for the storage of furniture.
- 8.15. As this previous appeal did not relate to a water tower, this appeal decision would be considered to be materially different to, and would not justify, the current development proposal and its use as a Use Class B8 use in these site-specific circumstances.
- 8.16. The allowed appeal decision at Ham Lane Reservoir against Exmoor National Park Authority's refusal of planning application 6/26/15/101 related to the erection of two holiday bunk houses. Paragraph 4 of this appeal decision stated that:
- "The use of the site as a service reservoir by means of a water storage tank would, in my view, fall within Use Class B8 of the Town and Country Planning (Use Classes) Order 1987 (as amended)."*
- 8.17. In addition, the appeal at Whiddon Reservoir related to the conversion of a subterranean water tank being converted into a dwellinghouse. Paragraph 5 of this appeal decision stated that a service reservoir was considered to be a B8 Use Class.
- 8.18. The current application site does not relate to a structure utilised as a service reservoir, nor a subterranean water tank. Importantly, the Land Use Gazetteer states that water storage tanks are a Use Class B8 use. Therefore, such uses would not be considered to be comparable to the use of a water tower, and these appeals would not be considered to demonstrate that on the balance of probabilities that the classification of water storage tank would apply to the planning use of a water tower.
- 8.19. Although it is appreciated that water towers typically feature a water storage tank, this represents only one element of a water tower. Ultimately, the size, scale, and height of a water tower are defined by its purpose, which is to create a pressurised water system that maintains a consistent water pressure for the supply of water in a water distribution system. For the avoidance of any doubt, the use of a water tower is not to distribute water. Therefore, it is considered that whilst a water storage tank would be likely to have a Use Class B8 use, a water tower has multiple uses that would go beyond solely the storage of water. In light of the above, it is considered that the use of a water tower would not include any form of distribution, and the use of a water would go beyond solely a storage use as defined by Use Class B8 of the Use Classes Order.
- 8.20. It is also noted that Section 3 of the Supporting Statement suggests that the site is currently used as a Use Class B8 use for the external storage of intermediate bulk containers of molasses in relation to a commercial distillery use.

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- 8.21. Whilst this information would not be relevant within the determination of the use class of the existing water tower, the use of the wider land ancillary to the water tower for such uses would be considered to represent a material intensification and change of the use of the site that would go far beyond the existing use of the site for a water tower. As such, and in comparison, to the Applicant's claimed current Use Class B8 use of the site, it is considered that the Applicant has failed to demonstrate on the balance of probabilities that the existing use of the water tower and the associated land within the application site would represent a Use Class B8 storage and distribution use.
- 8.22. To positively progress this application, the Local Planning Authority has sought to co-operate with the Applicant by requesting for further information on 09 January 2026, 16 January 2026, and 19 March 2026.
- 8.23. Following this, the Applicant referred to a decision made by Torridge District Council for the conversion of a water tower into a residential use via application 1/1088/2018/COUPD at The Water Tower, Higher Clovelly, Bideford, Devon.
- 8.24. The Delegated Officer Report for this application states that the site was considered to benefit from a Use Class B8 use based on the conclusions of Torridge District Council during the determination of application 1/0605/2018/CPL. The Supporting Statement for this application suggests that the view that this particular site had a Use Class B8 use was originally provided within pre-application advice via pre-application enquiry FPE/0454/2017. No information regarding the submitted details or the response from Torridge District Council are publicly available to review.
- 8.25. Therefore, whilst Torridge District Council have previously considered a separate water tower to have a Use Class B8 use, the basis for this assessment is not publicly available to review and there may be significant material differences between the two applications. Given the concerns previously raised in this Report, without further evidence, it is not considered that the use of the water tower within this site would represent a Use Class B8 use on the balance of probabilities in these site-specific circumstances. Ultimately, each application should be determined on its own site-specific merits.
- 8.26. The Applicant also referred to a recent appeal decision (APP/D0840/X/24/3341280) at Maders Reservoir, South Hill, Callington, Cornwall, which dismissed the appeal against the refusal of a Certificate of Lawful Use for the extension of an existing B8 storage unit. Paragraph 5 of this appeal decision confirms that the storage unit was a subterranean water reservoir, and Paragraph 8 of this appeal decision states that the Land Use Gazetteer confirms that a water storage tank is a Use Class B8 use.
- 8.27. Similarly to the assessment at Paragraph 8.18 of this Report, the current application site features a water tower and not a subterranean water reservoir. Therefore, whilst a previous Inspector may have considered that a water storage tank could represent a Use Class B8 use, this does not demonstrate on the balance of probabilities that the same classification would apply to the planning use of a water tower, which the Land Use Gazetteer to represent a Sui Generis use.

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- 8.28. In addition, as included within the submitted Supporting Information document, the Local Planning Authority provided advice to the Applicant prior to the submission of this current application between 25 May 2025 and 04 July 2025, where it was confirmed that, *"It is not clear that there is a B8 use given."* It is noted that no further information has been submitted to justify the current application beyond what was included within the Applicant's email to the Local Planning Authority on 02 July 2025, which is detailed within the submitted Supporting Information document.
- 8.29. In summary, as confirmed by the Planning Practice Guidance, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented to the Local Planning Authority. Based on the submitted information, it is considered that the Applicant has failed to sufficiently, precisely and unambiguously demonstrate that, on the balance of probabilities, the water tower would benefit from a Use Class B8 use within these site-specific circumstances. Given the above, it is recommended that a Certificate of Lawful Existing Use is refused.

9. Equality Implications

- 9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states: -
- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.
- 9.3 There are no known equality implications arising directly from this development.
- 9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

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10. Conclusion

- 10.1. The information included in this application for a Certificate of Lawful Existing Use would not sufficiently, precisely and unambiguously demonstrate that, on the balance of probabilities, the water tower at Roe House Lane, Norton Juxta Twycross would benefit from a Use Class B8 use. On this basis, it is therefore recommended that Certificate of Existing Lawful Use is refused in these site-specific circumstances.

11. Recommendation

- 11.1 **Refuse Certificate of Lawful Existing Use.**





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Appendix 3 Appeal decision 3194959



The Planning Inspectorate

Appeal Decision

Site visit made on 8 May 2018

by Mrs J Wilson BA BTP MRTPI DMS

Inspector appointed by the Secretary of State

Decision date: 4th June 2018

Appeal Ref: APP/X1118/W/18/3194959

Whiddon Service Reservoir, North Lane, Muddiford, Barnstaple, Devon EX31 4HG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order Schedule 2, Part 3, Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
- The appeal is made by Mr N Woofenden against the decision of North Devon District Council.
- The application Ref 64135, dated 13 November 2017 was refused by notice dated 8 January 2018.
- The development proposed is Change of Use of a Water Tank (Reservoir) and land within its curtilage (Use Class B8) to Dwelling House (Use Class C3).

Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class P of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the Change of Use of a Water Tank (Reservoir) and land within its curtilage (Use Class B8) to a Dwelling House (Use Class C3) at land at Whiddon Service Reservoir, North Lane, Muddiford, Barnstaple, Devon EX31 4HG. The approval is granted in accordance with the terms of the application Ref 64135, dated 13 November 2017, and the plans submitted with it but only insofar as it applies to the use of the site and subject to the standard conditions set out in paragraph W (12)(a) of the GPDO.

Main Issue

2. The main issue is whether the proposed development would constitute permitted development for the purposes of Schedule 2, Part 3, Class P of the GPDO.

Reasons

3. The site comprises a subterranean water tank, above ground evidence exists only in the form of curved vents but these are low to the ground. The tank itself is covered with vegetation and the "building" is not visible.
4. Initially the Council refused permission on the basis that the proposal failed the qualifying criteria under the GPDO and was not considered to be, or have last

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been, used for B8 purposes as defined in the Use Classes Order¹. This was the basis that the use was not a storage use in its own right but one ancillary to the wider distribution network of South West Water, and therefore a Sui Generis use.

5. In evidence the Council has now revised that approach following the consideration of the advice of Counsel on a separate application. In that case the storage of water was considered to be a B8 Use and in the absence of a reference in the Use Classes Order as to whether such storage was ancillary to a primary use or a use in its own right. In further evidence an appeal decision² is referred to whereby a service reservoir was considered to be a B8 Use Class. Therefore on the basis of a materially similar case (though not a material planning consideration in a prior approval case) the Council no longer seeks to defend the refusal reason. On this basis there is agreement between the parties regarding a change of use in respect of permitted development under Class P.
6. It is important to note that Class P permits only a change of use, not any building operations. Any enlargement of the building would necessarily involve building operations and so would require a separate planning permission, including operational works; access; and the formalising of the curtilage to all of which other considerations apply. This decision should not therefore be taken as forming any view on the issue of the suitability (or otherwise) of the building (i.e. the tank) as to whether works to effect a change of use would meet other policy considerations or requirements.

Conclusion

7. On the basis that there is now common ground between the appellant and the Council that the building falls within a Class B8 use, the change of use to Class C3 from B8 would be permitted development under Schedule 2, Part 3, Class P of the GPDO. Prior approval is therefore granted for the change of use only and the appeal succeeds.

Janet Wilson

INSPECTOR

¹ Town and Country Planning (Use Classes) Order 1987

² APP/F9498/W/15/3134763





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Appendix 4 Appeal decision 3341280



Appeal Decision

Site visit made on 26 July 2024

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2024

Appeal Ref: APP/D0840/X/24/3341280

Maders Reservoir, South Hill, Callington, Cornwall, PL17 7LL

- 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 Ada Green Landscape Gardener against the decision of Cornwall Council.
- The application ref PA23/08540, dated 20 October 2023, was refused by notice dated 21 December 2023.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the proposed extension of an existing B8 storage unit.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, I should explain that the planning merits of any use or operations are not relevant and therefore not an issue for me to consider in the context of an appeal under s195 which relates to an application for an LDC. My decision rests on the facts of the case and on planning law and judicial authority.
3. Although I attempted to make a site visit, access was severely restricted due to flooding on the unsurfaced lane. However, as the appeal is dependent upon the interpretation of Schedule 2, Part 7, Class H of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (GPDO), a site visit is not essential.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well founded.

Reasons

5. The Council has set out the full text of Class H of the GPDO and draws attention to the many references to 'building,' but do not accept that a subterranean water reservoir can correctly be described as a building but is a structure. The Council relies on an Inspector's comments in an appeal decision refusing the conversion of a reservoir tank to form tourist accommodation at Crackington Haven in which he found 'that the construction of a water tank,

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which is then covered in earth, cannot be properly described as being a building.¹

6. Section 336(1) defines 'building' as 'any structure or erection, and part of a building, as so defined, but does not include plant or machinery comprised in a building'. The GDPO also provides an interpretation of 'building' as including any structure or erection. Notwithstanding the Inspector's views in the Crackington Haven decision, it is clear that the distinction made by the Council that the reservoir is not a building for planning purposes was misdirected.
7. The appellant helpfully draws attention to caselaw which assists the conclusion in this case that the reservoir should be regarded as a building.
8. A water storage reservoir is within Use Class B8 and the appellant refers to the Land Use Gazetteer which confirms that the use of a water storage tank is a B8 use.
9. Detailed scaled sections, plans and elevations have been submitted by the appellant.
10. Class H permits the erection, extension or alteration of an industrial building or warehouse subject to a number of limitations and conditions. Paragraph H.1 indicates the floorspace and height limitations. H.1(b) (iii) indicates that development is not permitted if the gross floor space of the original building would be exceeded more than 50% or 1000 square metres, whichever is the lesser. It is not clear from the submitted plans what is the gross floor space of the building for an accurate assessment to be made.
11. Paragraph H.1(c)(ii) indicates that development is not permitted if the height of any part of the new building erected would exceed the height of the highest building within the curtilage of the premises or 15 metres, whichever is the lower. In this case, the height of the existing building must be the roof covering over the reservoir and the proposed building height would be above this.
12. It also appears that part of the development would be within 5 metres of any boundary of the curtilage of the building which would be contrary to paragraph H.1(e).
13. In an LDC appeal where legal issues are involved the onus rests squarely with the appellant to demonstrate the lawfulness of the proposal on the balance of probability. In this case the proposed development would not satisfy the limitations of the GPDO in respect the permitted development and express planning permission would therefore be necessary.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the proposed extension of an existing B8 storage unit was 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).

P N Jarratt

INSPECTOR

¹ Paragraph 9 APP/D0840/W/18/3202614





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Appendix 5 Correspondence with senior planning officer

From: Tim Hartley <Tim.Hartley@hinckley-bosworth.gov.uk>

Subject: RE: Planning Pre-application Acknowledgement Ref. 25/10056/PREHMO

Date: 4 July 2025 at 09:29:30 BST

To: Matthew Thompson <matt@lazydogdistillery.co.uk>

Hi Matthew

Yes, as with much in life some aspects of planning can be very straightforward but there are also grey areas. I'd agree that there should not be an over reliance on the gazetteer – we generally simply use it as a tool to assist. In this case though I think it is not clear that there is a B8 use given

- Possible abandonment of a B8 use
- Possible dual use or new use re telecoms equipment
- Possible sui generis use classification

As previously set out though thinking that the tower has a B8 use is not unreasonable as a starting point and indeed might be the end point also

I would agree though that an application for a Certificate of Lawful Existing Use as B8 premises is the best/most appropriate way forwards. These types of applications are sometimes easily determined but I suspect that we would have to take legal advice on this one. It will be important to submit as much supporting information as you easily can to support your case. I don't think that you needed to get professional assistance though

If you wanted to look at recent examples of such applications then these are:

25/00490/CLE – not yet determined

25/00245/CLE – not yet determined

25/00219/CLE – granted

25/00185/CLE – granted

The most recent one refused was 24/00301/CLE which was submitted by a firm of planning consultants. An appeal was submitted but then withdrawn – I've attached the statement that was submitted with that appeal just for info

Kind regards

Tim

Tim Hartley
Team Leader (Development Management)

T: 01455 255656