

## **Application for Certificate of Lawfulness of Existing Use (Class B8 – Storage and Distribution)**

**Applicant:** Matthew Thompson

**Site Address:** Former Water Tower, Roe House Lane, Norton Juxta Twycross,  
Leicestershire

**Local Planning Authority:** Hinckley & Bosworth Borough Council

**Application Type:** Section 191 – Certificate of Lawful Existing Use or Development

**Proposed Lawful Use:** Class B8 (Storage and Distribution) under the Town and Country Planning (Use Classes) Order 1987 (as amended)

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## Supporting Statement

### **1. Introduction**

This statement is submitted in support of an application under Section 191 of the Town and Country Planning Act 1990 to confirm the lawful existing use of the above site as falling within Use Class B8 (Storage and Distribution).

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.

This application seeks to formalise the planning status of the site by securing a lawful development certificate (CLEUD) for continued use under Class B8.

It is acknowledged that the Local Planning Authority (LPA) has stated that professional representation is not considered necessary for this type of application. Nevertheless, this document has been prepared thoroughly and in full consideration of the site history, legal precedent, and relevant case law, to assist the LPA in reaching a lawful and fair decision.

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### **2. Planning History and Legal Context**

The water tower was constructed in 1973 by the North West Leicestershire Water Board and operated as a water storage facility. Case law has consistently supported the classification of such utility infrastructure as falling within Use Class B8. Relevant appeal precedents include:

- **APP/F9498/W/15/3134763 – Ham Lane Reservoir** – confirmed that the use of a site as a water storage reservoir falls within Class B8.

- **APP/X1118/W/18/3194959 – Whiddon Reservoir** – following legal advice, the LPA withdrew its claim that water storage was sui generis and accepted it fell under Class B8.
- **APP/P1133/W/16/3163943 – Land at Higher Ash Farm, Ashprington** – confirmed Class B8 for a former utilitarian storage building and adjoining land.

Telecommunications installations were introduced by Orange Communications under permitted development rights in 1997 (ref: 97/00194/GDO – Former Water Tower, Roe House Lane), followed by additional equipment (ref: 99/00691/GDO – Former Water Tower, Roe House Lane) and a further installation in 2006 (ref: 06/00725/FUL – Former Water Tower, Roe House Lane). The 2006 application was a full planning application for six new dishes and upgrades to the existing equipment. However, the works involved only the attachment of dishes to the exterior of the tower via a metal frame. There was no change of use application, no material alteration to the building's structure, and no interference with its capacity for B8 use.

Such works do not constitute a material change of use (see *Burdle v Secretary of State for the Environment* [1972] 3 All ER 240 and *Gravesham BC v Secretary of State* [1982] 47 P&CR 142), which confirm that operational development only results in a material change where the use character is fundamentally altered. The equipment was clearly ancillary and reversible.

The 2023 planning application (ref: 23/01176/FUL – Former Water Tower, Roe House Lane) for residential conversion referenced 103 sqm of B8 floorspace being lost. This was stated explicitly in the application form and repeated within supporting documents. The LPA accepted this at face value and it was not disputed in the determination report or at appeal (ref: APP/K2420/W/24/3320374 – Former Water Tower, Roe House Lane). This amounts to tacit acceptance of the site's B8 status.

The tower was owned by Mahendra Patel from 2016 to 2023. During this time, there was a period of inactivity in anticipation of submitting a full planning application. The presence of telecoms equipment had already diminished before this change of ownerships, with final removal likely taking place c. 2014–2015. Therefore, as of 2025, at least ten years have passed since the last known telecoms use.

Recent CLEUDs granted by the Council for Class B8 include: - **25/00185/CLE NS**  
**25/00219/CLE** – Both granted.

These reinforce the Council's willingness to confirm B8 use where no express change of use has occurred and the site remains consistent with that purpose.

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### 3. Current Use and Site Integrity

The site was acquired by the applicant in March 2025. At the time, the compound was fenced with a timber post-and-rail structure, a galvanized steel gate on steel gateposts and

contained a sign prohibiting access on safety grounds. Although overgrown, the land was evidently enclosed and not abandoned. A metal security fence has since been erected.

The site now accommodates: - IBCs of molasses (full and empty) and materials for distillery operations and future site works.

To maintain access, the unbound track from Roe House Lane has been patched using aggregate. No new hardstanding has been laid, and the alignment and functionality of the access remain unchanged. The track has always been passable.

The tower is not currently used internally but remains structurally sound and capable of being brought into use. Access is via a secured roof hatch, consistent with its design. Spalling to external concrete surfaces is minor and of no structural consequence. Some areas of patch repair indicate a degree of ongoing maintenance. A structural engineer has informally confirmed the concrete construction of the tower is in excellent condition.

Evidence of previous ancillary telecoms use has been removed in its entirety, with no evidence of this use remaining. The planning unit is coherent and singular: the tower and its immediate compound operate together for a unified purpose. There is no functional subdivision.

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#### **4. Legal Assessment and Classification**

No formal planning permission exists granting Class B8 use. However, the absence of any lawful change of use to telecommunications or any other classification leaves Class B8 as the last known and uncontested use. This aligns with the guidance in *Impey v Secretary of State for the Environment* [1984] JPL 697, where the onus is on the LPA to demonstrate abandonment—not mere inactivity.

The CLEUD process under Section 191 requires the applicant to show, on the balance of probabilities, that:

- The use in question is ongoing or was ongoing within the previous 10 years.
- There has been no material change of use since the last lawful use.
- There has been no abandonment.

On all three grounds, the evidence presented in this submission and the supporting documents demonstrate that the use of the site as B8 has persisted—if not in active day-to-day operation, then certainly in capacity and intent. Further, the Council's own validation of the previous application as involving B8 use (23/01176/FUL – Former Water Tower, Roe House Lane) materially supports the fallback position.

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## 5. Conclusion

On the balance of probabilities: - The site has not been abandoned. - No change of use has occurred. - The building and surrounding land together comprise a single planning unit. - Case law and appeal decisions support the continued classification as B8.

Accordingly, the applicant respectfully requests that the Council issue a Certificate of Lawful Existing Use confirming the lawful planning status of the land and building as Class B8 under the Town and Country Planning Act 1990.

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**Annex: Evidence References** - Planning Application and Delegated Report –  
23/01176/FUL – Former Water Tower, Roe House Lane - Appeal Decision –  
APP/K2420/W/24/3320374 – Former Water Tower, Roe House Lane - Appeal Decision –  
APP/F9498/W/15/3134763 – Ham Lane Reservoir - Appeal Decision –  
APP/X1118/W/18/3194959 – Whiddon Reservoir - Appeal Decision –  
APP/P1133/W/16/3163943 – Land at Higher Ash Farm, Ashprington - Legal Precedents: -  
*Burdle v Secretary of State for the Environment* [1972] 3 All ER 240 - *Gravesham BC v Secretary of State* [1982] 47 P&CR 142 - *Impey v Secretary of State for the Environment* [1984] JPL 697