

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.

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.

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.

- 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).

- 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.

- 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.

- 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).

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.**