Planning Inspectorate

Appeal Decisions

Site visit made on 13 February 2026

by Grahame J Kean B.A. (Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2026

Appeal A Ref: APP/X4725/X/24/3355092
Castleford Wastewater Treatment Works, Wheldon Road, Castleford, WF10 2PP

- 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 Downing LLP against the decision of Wakefield Metropolitan District Council.
- The application ref 24/00835/CPL, dated 13 May 2024, was refused by notice dated 20 August 2024.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
- The development for which a certificate of lawful use or development is sought is: Proposed Ground Mounted Solar Array, on operational land at Castleford Wastewater Treatment Works with installed generating capacity of up to 354kW and would be connected to the WWTW via underground cables, power generated to be utilised by Yorkshire Water to power the operations of the WWTW, with very occasionally any excess power produced to be exported to the grid.

Appeal B Ref: APP/X4725/X/24/3358091
Dewsbury Wastewater Treatment Works, Clough Lane, Dewsbury, West Yorkshire, WF12 9BB

- 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 Downing LLP against the decision of Wakefield Metropolitan District Council.
- The application ref 24/00835/CPL, dated 13 May 2024, was refused by notice dated 20 August 2024.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
- The development for which a certificate of lawful use or development is sought is: Proposed Ground Mounted Solar Array, on operational land at Dewsbury Sewage Treatment Works with installed generating capacity of up to 1000 kW connected to the WWTW via underground cables, power generated to be utilised to power the operations of the WWTW, with very occasionally any excess power produced to be exported to the grid.

Decisions

Appeal A

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the proposed operations which are found to be lawful.

Appeal B

2. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the proposed operations which are found to be lawful.

Appeal A and Appeal B: preliminary matters

3. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. The overarching issue for each appeal is whether the Council's decision to refuse the LDC was well-founded.

4. The onus is on the appellant to demonstrate on the balance of probabilities, that the proposed developments would be lawful. By s191(2) 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 of the requirements of any enforcement notice then in force.

5. In each appeal the appealed application form was accompanied by a supporting statement; legal opinion; EIA screening response; pre-ecological appraisal; site location plan; site layout plan; generic equipment drawing; and similar permitted development schemes including other Yorkshire Water sites.

6. The Council concluded separately for each proposal that the development described in the submitted screening requests, was not likely to result in significant effects upon the environment within the meaning of the EIA Regulations and concluded that the development described therein was not considered to be an EIA development as defined by the EIA regulations, and no Environmental Statement or Environmental Impact Assessment was required. I agree.

Appeal A: description of site and proposed development

7. The proposed development is located within the boundaries of the existing Castleford WWTW, entirely within land owned and released by Yorkshire Water for the proposed development with land having been acquired by a conveyance dated 3rd of September 2007. The site receives wastewater flows from the surrounding area and treats it to the required standard. Above ground, various types of equipment, machinery and tanks required for the operation of the WWTW are visible at the site.

8. The site is directly connected to the existing WWTW and has historically been used as part of the operations on site. The proposed solar PV array will be located to the north of the WWTW in the immediate vicinity of the WWTW's infrastructure (Easting: 444352, Northing: 426540). The site is not accessible to the public and is under the sole control of Yorkshire Water, with access to the site managed through the existing access via private track. This area has historically been used for operations relating to the WWTW such as housing infrastructure and material storage, and is part of the wider complex. The use of the land has not changed since the date of acquisition. The site is considered to be operational land for the purposes of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO).

9. The proposed development would occupy a red line area of 0.57 ha. It would have an installed generating capacity of up to 354kW and would be connected to the WWTW via underground cables. The power generated by the development would be used by Yorkshire Water to power the operations of the WWTW, in furtherance of its statutory duty as a water and waste operator. Very occasionally any excess power produced by the Development might be exported to the grid. This would allow surplus energy to be used productively if the development generates more

power than anticipated. The vast majority however would be extracted to serve the operations on site.

Appeal B: description of site and proposed development

10. The proposed development is located within the boundaries of the existing Dewsbury WWTW, entirely within land owned and released by Yorkshire Water for the proposed development with land having been acquired since 3rd March 2008. The site receives wastewater flows from the surrounding area and treats it to the required standard. Above ground, various types of equipment, machinery and tanks required for the operation of the WWTW are visible adjacent to the site.

11. The site is directly connected and adjacent to the existing WWTW and has historically been used as part of the operations on site. The proposed solar PV array will be located to the east of the WWTW in the immediate vicinity of treatment ponds and other WWTW infrastructure, (approximate grid reference Easting: 426377, Northing: 419811). The site is not accessible to the public and is under the sole control of Yorkshire Water, with access to the site managed through a locked access gate. This area has previously housed infrastructure relating to the WWTW and is part of the wider complex. The use of the land has not changed since the date of acquisition. The site is considered to be operational land for the purposes of the GPDO.

12. The proposed development would occupy a red line area of 1.59 ha. It would have an installed generating capacity of up to 1000 kW and would be connected to the WWTW via underground cables. The power generated by the development would be used to power the operations of the WWTW. Very occasionally any excess power produced by the development might be exported to the grid. This would allow surplus energy to be used productively if the development generates more power than anticipated. The vast majority however would be extracted to serve the operations on site.

<u>Appeal A and Appeal B</u>

Reasons

13. The cases made for and against Appeal A and Appeal B are similar in all material respects save for the details of each scheme described above and in the supporting and appeal statements. Considering each of the appeals separately my reasons below apply equally to both appeals.

14. The applications were refused by the Council as it considered the proposals were not development permitted by Class B of Part 13 of Schedule 2 of the GPDO.

15. It is common ground between the appellant and the Council that the appealed applications are on behalf of a sewerage undertaker and are on operational land. Further, the proposed developments would comply with the relevant limitations in Class B.1 since they would not involve the extension or alteration of a building and would not involve the erection of plant or machinery exceeding the relevant height limits.

16. It is also common ground that in each case the ground mounted solar arrays are properly classed as structures or erections within the meaning of Article 2(1) of the GPDO. The Council states that the solar arrays would be buildings for the purposes of the GPDO unless they are structures or erections in the nature of

plant and machinery. Notably however, in its delegated reports[1] which the Council considers fully set out its position on the appeals, the Council considers that the appellant has failed to establish that the proposed development "*solely*" involves the provision of plant or machinery.

17. The Council points to the definition of "building" in s336(1) of the 1990 Act, Article 2 of the GPDO and the decision in Skerrits of Nottingham Limited v. SSETR [2000] EWCA Civ 5569. It argues that the proposal includes a building which is not permitted by Class B of Part 13 (unless for the purpose of survey or investigation). Further, the Council argues that as the development is for the purpose of the generation of electricity, it is not development permitted by the GPDO, Part 14 of Schedule 2 or otherwise.

Main issues for each appeal

1) *whether the proposed solar equipment is permitted development considering the definitions of a "building" and "plant or machinery" in the GPDO; and*

2) *whether the proposals can only be considered in Part 14, not Part 13 of GPDO.*

<u>Main Issue 1</u>

The general position under the 1990 Act

18. Section 336(1) of the 1990 Act provides that the term "building," for the purposes of the 1990 Act: "*includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building*." In other words, for the purposes of the 1990 Act, s336(1) provides that a structure or erection is a building but not plant or machinery "comprised" in a building.

The position under Class B of Part 13

19. The GPDO is a consolidation of the 1995 Order but with several additions. The explanatory notes to the 2015 GPDO explain that its main purpose is to grant planning permission for certain classes of development without the requirement for a planning application to be made under Part 3 of the 1990 Act. It notes that under Part 14 a new permitted development right is introduced for the installation etc of solar panels on roofs of non-domestic buildings providing up to 1 megawatt, subject to prior approval for matters of "*design or external appearance, in particular the impact of glare on occupiers of neighbouring land*".

20. A new permitted development right was also introduced in the 2015 Order to allow sewerage undertakers to install a pumping station, valve house, control panel housing or switch-gear house in a sewerage system. The explanatory memorandum[2] stated:

"*This will enable minor operational development by sewerage undertakers, and will harmonise the rights for sewerage undertakers with those for water undertakers. The right would not apply to development involving the installation of a station or house exceeding 29m3 in capacity, where the installation is carried out at or above ground level, or under a highway.*"

[1] Reports dated 15 August 2024.
[2] See Explanatory Memorandum, paragraph 7.15

21. It is commonly understood that permitted development rights enable development whilst reducing bureaucracy, and support various developers, including statutory undertakers, in the discharge of their duties. It is also commonly understood that the scheme contains limitations and conditions on the exercise of such rights in the interests of what might be called the proper planning of the area, so as to exclude from scope, development that should undergo more detailed scrutiny by way of a planning application, to assess its impacts on the environment and so on.

22. Thus, Article 3(1) of the GPDO grants planning permission for certain classes of development set out in Schedule 2. Class B in Part 13 of Schedule 2 specifies development by or on behalf of sewerage undertakers which is permitted. The relevant part is Class B(f):

"*any other development in, on, over or under their operational land, other than the provision of a building but including the extension or alteration of a building."*

23. There is a limitation in the case of Class B(f) development, ie that it may not "*consist of the installation or erection of any plant or machinery exceeding 15 metres in height or the height of anything it replaces, whichever is the greater*."

24. The appellant focuses mainly on Class B although there is ambiguity in their statements, as they sometimes appear to rely on Class A. It is not mentioned and may not be relevant, but Class B does not contain, as does Class A, a qualification built into the general heading, that it should be "*Development for the purposes of their undertaking".* A statutory undertaker such as Yorkshire Water only acts in furtherance of its statutory powers and duties in any event.

25. Class A relates to development by water undertakers and permits similar development to that permitted by Class B of Part 13. Class A(g) is equivalent to Class B(f). Yorkshire Water is appointed by the Secretary of State as the water undertaker for its area as well as the sewerage undertaker for its area. Despite the lack of clarity in the statements, if the development is permitted under Class B insofar as concerns Yorkshire Water's functions as a sewerage undertaker, I see no reason why it should not be permitted development under Class A in respect of its being a water undertaker, but the appeals will be considered with respect to Class B.

26. In considering the definition of "building" in Class B(f), Article 2 GPDO contains its own definition of building. Clearly, for the purposes of construing this word in sub-paragraph (f), primary recourse should be had to the definition in Article 2(1), the relevant part of which reads:

"Interpretation

2.—(1) In this Order—…

"building"—

*(a) includes any structure or erection and, except in [*classes of development not relevant for present purposes*] includes any part of a building; and*

(b) does not include plant or machinery…"

27. So, for the purposes of GPDO, Article 2(1) states that a building includes any structure or erection, but excludes from the definition, plant or machinery.

28. It would therefore appear that the effect, if not also the intention, of the permitted right in sub-paragraph (f) is to allow sewerage undertakers to carry out a wide range of development on their operational land including development consisting of plant and machinery outside, or separately from a building, provided that it meets the height limitation of 15m.

Historical origin of permitted development rights for certain undertakings

29. Permitted development rights in England, at least in the form in which they are recognised today, were introduced in 1948 following the passing of the Town and Country Planning Act 1947 (1947 Act). After the "appointed day" of 1 July 1948, permitted development for wastewater works was contained in the Town and Country Planning (General Development) Order 1948 (1948 Order).

30. There was more than one class that may then have been relevant to consider, because several different entities who may have operated water treatment works, were subject to differing classes of permitted development, such as for example local authorities. However, the more relevant predecessor wording within the line of development orders culminating in the current GDPO, would be within Class XVIII of the 1948 Order, Development by Statutory Undertakers: Class C:

"C. Water or Hydraulic Power Undertakings

Development required for the purposes of the undertaking of any of following descriptions, that is to say:-

….(iii) any other development carried out in, on, over or under the operational land of the undertaking except:-

(a) the erection, or the reconstruction or alteration so as materially to affect the design or external appearance thereof, of buildings,

(b) the installation in or erection, by way of addition or replacement, of any plant or machinery, or structures or erections of the nature of plant or machinery, exceeding 50 feet in height or the height of the plant, machinery, structure, or erection so replaced, whichever is the greater."

31. Class C is not the direct forerunner of the current Class B in Part 13. For sewerage authorities, under the 1948 Order, Class XVI made a short reference to below ground development pursuant to public health legislation. It was only with the 1995 Order, which was the last consolidating exercise before the 2015 Order, that Part 16 of the 1995 Order (development by or on behalf of sewerage undertakers) Class A(e) introduced the same wording as now appears in Class B(f).

32. Section 119 of the 1947 Act defined building: "…*building includes any structure or erection and any part of building as so defined, but does not include plant or machinery comprised in building*". This definition was similar to that for "building" contained in the 1948 Order:

""building" does not include plant or machinery or a structure or erection of the nature of plant or machinery but includes any other structure or erection and any part of a building as so defined"

33. In the current GPDO definitions, the wording "of the nature of" (plant or machinery) is omitted, but otherwise the wording appears substantially the same.

Significance of difference between definitions of building in s336 and Article 2(1)

34. The Interpretation Act 1978 s11 (construction of subordinate legislation) states that where an Act confers power to make subordinate legislation, "*expressions used in that legislation have, unless the contrary intention appears, the meaning which they bear in the Act."* In this case the drafting of the subordinate legislation does appears to contain wording that has a meaning contrary to the Act, ie a "building" in Article 2(1) now does not include plant and machinery unless it is comprised within a building.

35. The distinction is however well-established and clearly is not in error. One (contemporaneous) commentator[3] to the 1948 Order stated:

"The definition in the Act is somewhat wider in that it would cover plant and machinery and structures or erections in the nature of plant or machinery not comprised in a building."

36. The appellants point to a line of cases, for example Barvis[4], where development whilst appearing to involve plant and machinery, has been found to be a building for the purposes of the 1990 Act. These cases[5] suggest that in general plant and machinery that by itself constitutes a structure or erection, is capable of falling within the definition of a building under the 1990 Act. This of course is the usual approach taken to evaluate certain types of development under the 1990 Act.

37. However, Article 2(1) of the GPDO excludes all plant or machinery from the definition of a building, not just plant and machinery "comprised in a building". It might then be said that all structures or erections in the nature of machinery or plant are expressly excluded from the definition of a building for the purposes of the GPDO. Therefore, there would remain scope for plant or machinery to be a building for 1990 Act purposes, but not a building for the purposes of the Order.

38. In support of its position the appellant relies on the distinction between buildings and plant or machinery in tax cases. It is important in my view not to pay too much attention to the wording of particular phrases in judgments in different contexts, yet the appellants derive three principles from this line of authorities:
    - *a structure fixed to the ground may be a building or "plant or machinery" and it is relevant to consider the function and purpose of the structure;*
    - *structures that are apparatus used for carrying on business are best described as plant or machinery; and*
    - *structures used as premises or to provide shelter or storage are best described as buildings.*

39. I have not been made aware of any planning related decision as to whether solar equipment is plant or machinery for permitted development by sewerage (or water) undertakers. The "principles" reflect, broadly speaking, the business use test and premises test, extracted by Hoffman J, in the Wimpey case[6], ie the plant and machinery is the apparatus with which a business is carried on, not the "setting" in which it is carried on.

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[3] Supplement to the Law of Town and Country Planning, J P Howard Roberts, CBE. 1949, at p II(45).
[4] *Barvis Ltd* v *Secretary of State for the Environment and Another* (1971) 22 P&CR 710 (an 89 feet tower crane which ran on a steel track fixed in concrete was found to be structure or erection and hence a building for the purposes of planning permission).
[5] See also *Cheshire County Council* v *Woodward and Another* [1962} 2WLR 636 where a mobile hopper and conveyer were also held to be a building
[6] See Wimpy International Ltd. v Warland (1987) 61 T.C. 51, a decision upheld in the Court of Appeal [1989] S.T.C. 273.

40. The appellant considers that the above principles reflect the ordinary meaning of the terms 'building', 'plant' and 'machinery' such that it is appropriate to apply them to assess whether a structure or erection is a building, or is in the nature of plant or machinery, within the meaning of the GPDO.

41. The appellant also examines in detail the Valuation for Rating (Plant and Machinery) (England) Regulations 2000, concluding that solar generating equipment is treated as plant and equipment for rating valuation purposes. It is in my view, sufficient to note that Table 1 in the Schedule includes, within the definition of plant and machinery:

"…(n) Solar cells; solar panels."

42. The 2000 Regulations do not relate to the planning status of solar panels, or the planning system in general. The most that can be said is that rating legislation identifies solar equipment as plant or machinery.

Treatment of solar panels as plant and machinery in capital allowances

43. In addition, it may be noted that plant and machinery allowances expressly include the provision of solar panels (as special rate). Interestingly, HMRC's capital allowances manual[7] explains that before April 2012, solar panels were generally treated as special rate on the basis that "*they were integral features of buildings or structures or long life assets*".

44. As the manual points out (CA21010 - Plant and Machinery Allowances (PMA): meaning of plant and machinery), the capital allowance legislation does not define 'plant' or 'machinery', the starting point being that these terms take their common law (case law) meaning, but some assets are excluded from PMAs regardless of whether they function as plant in common law; and some assets are treated as if they were plant "*regardless of their function*."

General approach

45. Statutory instruments such as the GPDO are classed as legislation in addition to statutes. A useful starting point is the Clarke-Holland case[8]:

"Construing elements of the legislation for planning is not, in essence, a different exercise from the interpretation of other statutes and statutory instruments. The court's essential function is to ascertain the meaning of the words in the legislation having regard to the purpose of the provisions in question (CAB Housing Ltd v SSLUHC [2023] EWCA Civ 194 at §22 per Sir Keith Lindblom…The ordinary meaning of the language used is to be ascertained when construing the Order in a broad or common sense manner. It is to be expected that common words are to be given their common meaning unless there is something which clearly indicates to the contrary (R (Mawbey) v Lewisham at §19 and §20)."

46. The meaning of the words "plant or machinery" in Article 2(1) of the GPDO, must be ascertained, ie their ordinary and natural meaning in their context, before answering the question whether the proposed development would be properly classed as plant or machinery for those purposes.

[7] HMRC Capital Allowances Manual 16 April 2016, updated 30 March 2026
[8] R (on the application of Gabriel Clarke-Holland) v Secretary of State for the Home Department Secretary of State for Levelling Up, Housing and Communities v Braintree DC, Secretary of State for Defence [2023] EWHC 3140 (Admin) at para 52

47. Bennion[9] notes that a single composite expression may be used to create a single composite class to avoid arguments about whether something falls within one term or another. An example given, is "sports and pastimes" it being noted that the law constantly uses pairs of words in this way and "*as long as the activity can properly be called a sport or a pastime, it falls within the composite class*."[10]

48. Closer to the tax-related line of cases, in ACT Construction Ltd v Customs and Excise Commissioners [1981] 1 WLR, the House of Lords considered "repair or maintenance" were not used in antithesis to one another but formed a single composite phrase. In many cases "*there may well be an overlap between them*".

49. There is widespread use of "plant or machinery" in legislation where it seems to be treated, not always, but often as a composite class in the sense that the consequences for an item falling within one limb of the phrase only, are immaterial. In these appeals neither party regards it as critical to its case that the distinction matters, and the GPDO does not treat the words differently, one from the other.

50. Furthermore, s12 of Customs and Inland Revenue Act 1878 provided for deductions for depreciation of "*machinery or plant*" in respect of capital expenditure. Albeit the word order is transposed, this appears to be one of the earliest uses in legislation of the phrase. As it has been linked to the tax treatment of items ever since, it provides some rational basis for considering its meaning in that context, given that the legislation under consideration does not provide a meaning. By the same token, although the Council criticises the use of the dicta in the case of Carr, discussed below, because it dealt with language in tax legislation (s41 Finance Act 1971), it is because the derivation of the phrase appears to stem largely from tax laws and jurisprudence, that the same phrase in the GPDO (where there is no other explanatory meaning) should at least be considered in that light.

51. In Evans v Secretary of State for Communities and Local Government [2014] EWHC 4111 (Admin) (at paragraph 17) it was held that "[the] *ordinary meaning of the language used is to be ascertained when construing the development order in a broad or common sense manner*". The case directly concerns a general development order.

52. An ordinary (and in fact the classical legal) definition of "plant", accepted by the House of Lords in Barclay, Curle[11] was given, not in a tax case but a case under the Employer's Liability Act 1880, the Yarmouth case[12]:

"in its ordinary sense, it includes whatever apparatus is used by a business man for carrying on his business, — not his stock-in-trade which he buys or makes for sale, but all goods and chattels, fixed or moveable, live or dead, which he keeps for permanent employment in his business".

53. Interestingly, and as the Council points out, the thing Yarmouth held to be plant was a horse, but the principle established held good and is reflected in many cases since then, for example Haigh[13] where the House of Lords observed:

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[9] Bennion on Statutory Interpretation, Bailey, Diggory, 7th ed. 2017
[10] R v Oxfordshire County Council and another, ex parte Sunningwell Parish Council [1999] 3 All E R 385
[11] *Inland Revenue Commissioners v Barclay, Curle & Co. Ltd* [1969] 1 W.L.R. 675
[12] *Yarmouth v. France* (1887) 19 Q.B.D. 647. s\ee also an earlier case, Blake v Shaw (1860) Johnson 732 70 E.R. 615 in which it was held that "*All the matters permanently used for the purposes of a trade, as distinguished from the fluctuating stock, are commonly included in the term "plant*.""
[13] Haigh v Charles W Ireland Ltd House of Lords (Scotland) [1974] 1 W.L.R. 43

"The marked preference which courts habitually show for citing judicial in preference to lexicographers' definitions of ordinary English words, even when they are not legal terms of art, has led to the acceptance of Lindley L.J.'s definition as being the meaning of the word "plant" where it has been used without any express statutory definition in a variety of enactments, particularly those dealing with taxation of industrial enterprises."

54. That said, I also bear in mind that Lindblom LJ in the Court of Appeal case of Mawbey[14] said (paragraph 22):

"*If there were any real doubt as to the ordinary relevant meaning of the word, I can see no reason why one should not turn to dictionaries to dispel it. This is a well-established technique of statutory construction, recognized in Bennion on Statutory Interpretation (at section 24.23): "Dictionaries may be consulted to ascertain the meaning of terms …*"."

55. For example, in the online Chambers Dictionary the relevant definitions are: *Plant: "3. buildings, equipment and machinery used in the manufacturing or production industries, eg a factory, a power station, etc." and Machinery: "1 machines in general. 2 the working or moving parts of a machine. 3 the combination of processes, systems or people that keeps anything working, or that produces the desired result."* In the Shorter Oxford Dictionary 3rd ed. plant is defined as "*the fixtures, implements, machinery, and apparatus used in carrying on any industrial process"* and machinery is defined as "*machines, or their parts, taken collectively; the mechanism or works of a machine or machines*."

56. I find these definitions useful because they focus more on the exact nature of plant or machinery, untrammelled by contextual matters relative to tax or non-planning legislation, in contradistinction to an analogous and principled approach to discovering whether a structure in a generalised sense fulfils a certain purpose (which purpose has a foundation in public policies about non-planning matters).

57. The definitions converge inasmuch as they highlight that plant and machinery typically means apparatus used in an industrial process, including their working parts. This meaning would seem apt to include the proposed developments.

58. The other point to make here, in my view, is that although there are tax incentives for renewable forms of energy, such as solar panels, there is no evidential link between those provisions and the long-established use of the term "plant or machinery" in the GPDO. Its existence is not seen as due to whether tax benefits might accrue to anyone. I would agree with the Council that I should be wary of giving significant weight to publications in a non-planning context.

59. I also note that in Wimpey, Hoffman J said, at p.86:

"*I accept that the test for whether a whole building or structure is premises depends upon its function … It is not simply whether the structure is used for a business purpose but whether it is used as plant rather than as premises*." (My emphasis). He pointed out that the majority in Barclay, Curle held that:

"even a building or a structure (in that case a dry dock) could be plant if it was more appropriate to describe it as apparatus for carrying on the business or

[14] R. (on the application of Nigel Mawbey), London Borough of Lewisham Council, Secretary of State for Communities and Local Government v Cornerstone Telecommunications Infrastructure Ltd. [2019] EWCA Civ 1016

employed in the business than as the premises or place in or upon which the business was conducted." (Emphasis given in judgment).

60. These sorts of distinctions seem particularly concerned with differentiating things according to whether, and if so the extent of, or the circumstances in which, a financial benefit accrues to the claimant. It does not appear to be the sort of distinction that is made within the GPDO generally, including Part 13 Class B, which is concerned primarily with whether development is or is not subject to the scrutiny of a planning application.

61. Furthermore, strictly applying the Yarmouth definition, if one considers something that is not used for carrying on the business, it cannot be "plant". One might therefore question why the proposed development should be permitted development when part of the electricity generated through the solar equipment, (said to be 5%) however small, is emphasised in terms to be "*very occasionally exported to the grid*", not to power the operations of the WWTW. No case is made in terms for a de minimis application to this part of the proposal and no authority is cited. That said, the case of Garland[15] is some authority for the proposition that a trifling excess over the GPDO limits (in that case the 1963 GPDO, Schedule 1, Part I, Class I.1) could be disregarded. That is more likely to be the case than where, for example, a quantifiable threshold in a strict "limitation" set out in the GPDO is exceeded, which is not the case here.

62. The appellants cite another tax case, Carr v Sayer (1992) 65 T.C. 15. Kennels, purpose-built for quarantine, were held not to be plant but had a typical premises function, providing shelter. The appellant quotes selectively from 3 of the 5 principles set out at pp. 22–23 of the judgment:

"*First,… plant carries with it a connotation of equipment or apparatus, either fixed or unfixed…not… wide enough to include buildings in general… The premises…in which a business is carried on would not normally be …"machinery or plant".*

Second…"machinery or plant" is apt to include equipment of any size…The equipment does not cease to be plant because it is so substantial that, when fixed, it attracts the label of a structure or, even, a building…

Fifth, one …function…of a building is to provide shelter and security for people… using it and for goods inside it...a building does not [have] *the character of plant simply, for example, because it is used for storage by a trader carrying on a storage business."*

63. The third principle is said to follow on from the first, but the fourth principle is as relevant as the others, namely, that "*conversely, buildings not normally regarded as plant do not become plant simply because they are purpose built for a particular business activity*". In other words, the fact that an item passes the business use test is not enough to turn it into "plant".

64. Ultimately Article 2(1) of the GDPO, as it is drafted, appears to require a decision to be made whether the development in question is, firstly, a structure or erection that is otherwise counted as a building, and secondly, to apply the deemed exclusion from that definition, of anything that amounts to plant or machinery. It may then be concluded that the Council was in error when it stipulated a requirement to establish that the proposed development "*solely*" involves the

[15] Garland v MHLG [1968] 20 P&CR 9

provision of plant or machinery. In my view Article 2(1) does not redefine "building" so much as disapply the definition in the 1990 Act to exclude anything that comes within the meaning of plant or machinery, but as to whether it does so, if reference is to be made to tax cases, I prefer the more nuanced approach of Hoffman J.

65. The judgment in Skerrits established the three main factors for deciding whether there is a "building" for the purposes of the 1990 Act – size, permanence and physical attachment. Under Article 2(1) there might be a building that would have all the necessary ingredients demanded by Skerrits, yet if it is of a nature that commends itself more to the appellation of "plant or machinery" that is all that is necessary to exclude it from the definition of building for GPDO purposes. Of course, if the plant and machinery, say for example a waste facility, were wholly contained within a large structure that was clearly a building in its own right, then one would expect that sub-paragraph (a) of Article 2(1) would apply to render it a building and so excluded from permitted development unless one of the other sub-paragraphs of Class B applied.

66. The same would apply to the proposed solar equipment. The proposals are identified in the application form as consisting of, or including, the carrying out of building or other operations but as to whether "a building" is proposed, the details of the proposals are relevant.

67. The precise details proposed in each appeal obviously differ, however in each case the proposed solar PV arrays will be located on land in the immediate vicinity of WWTW infrastructure. They would comprise panels mounted on a rack with poles piledriven to a depth of approximately 2.5m or set into a small buried concrete foundation. The panels would be mounted no more than 1.5 m above ground level at the lowest point rising to no more than 3.2 m at the highest point. Associated infrastructure is identified as electrical infrastructure including inverters, transformers, switchgear and cabling, on site access track, CCTV security columns, perimeter fencing, construction compound and landscaping and planting. They do not appear to be part of a building or contained within a building as such.

68. The solar arrays would have for their purpose the generation of power for Yorkshire Water's operations and further to its duties as sewerage operator. In the appellant's estimation, applying tax cases analogously, the proposed apparatus would be used for carrying on the business or undertaking in question, rather than constituting the premises or building within which the activity takes place.

69. What is clear to me from the foregoing discussion, is that at any rate the proposed development would be more readily understood as plant or machinery rather than "a building" or part of a building, for the purposes of Article 2(1).

Liverpool appeal decision

70. The Council relies on an appeal decision Ref APP/J0405/C/13/2206029 related to permitted development at Liverpool Airport concerning solar panels and their supporting framework. In the context of the GPDO the Inspector found that solar panels were buildings.

71. The decision involved a different class of permitted development to that considered here, ie Part 8, Class F. Class F permits the carrying out on operational land by a relevant airport operator of development, including the erection or alteration of an operational building, in connection with the provision of

services and facilities at a relevant airport. It excludes from permitted development the erection of a building other than an operational building. The dispute was not whether the solar panels were buildings (they were accepted as such) but whether they were operational buildings.

72. The decision is criticised by the appellant as not referring to the GDPO definition that excludes plant or machinery comprised in a building, but it appears there was no such question raised by any of the parties. The Inspector found that "*the statutory definition at section 336 of the Act … includes 'any structure or erection'... so that I see no reason not to treat the panels and framework as a building for this purpose*."

73. The decision has little relevance to consideration of the wording in Part 13; water or sewerage undertakings have permitted development rights but they are more restricted in relation to buildings, whereas airport operators are given more extensive permitted development rights in relation to operational buildings.

Conclusion on main issue 1

74. I conclude from the foregoing that the proposed ground mounted solar panels and associated infrastructure proposed, in each of the Appeals A and B, fall within the definition of "plant or machinery" in Article 2(1)(b) and are permitted development.

Main issue 2

75. Part 14 of Schedule 2 of the GPDO provides permitted development rights for renewable energy. However, no Class within Part 14 permits development of the nature proposed here, even though there are permitted development rights for solar power. It may then be asked why Part 13 should enable development for solar energy purposes when it is silent about this specific form of development.

76. Part 14 Class K provides permitted development rights for the installation of microgeneration within the curtilage of a non-domestic building. These apply to microgeneration in the curtilage of any type of non-domestic building by any person. In contrast, the permitted development rights in Part 13 Class B are solely for sewerage undertakers.

77. In common with other statutory undertakers, more extensive permitted development rights are provided on their operational land compared to the public at large. Had the Government considered it appropriate to limit the rights granted in Part 13 Class B to those not expressly covered elsewhere (such as in relation to microgeneration) then I agree with the appellant that it is likely that would have been subject to specific legislation in which case the generality of Part 13 Class B and height limitations in B.1 might have been expressed differently.

Conclusion on main issue 2

78. The undertaker is not limited to making use only of Part 14 of Schedule 2 to the GPDO given the possibility that, depending on the nature of the proposed development, solar arrays can fall within the definition of "plant or machinery" in Part 13. If rights in Part 13 Class B(f) do not apply, a sewerage undertaker could use the rights given under Part 14 up to the specified limits.

Conclusion on Appeal A

79. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for proposed Ground Mounted Solar Array, on operational land at Wastewater Treatment Works (WWTW) at Castleford with installed generating capacity of up to 354kW connected to the WWTW via underground cables is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Conclusion on Appeal B

80. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for proposed Ground Mounted Solar Array including installation of underground cabling, and associated works at Yorkshire Water owned Dewsbury WTW is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Grahame J Kean

INSPECTOR

Planning Inspectorate

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 13 May 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:

The proposed development is considered to be permitted development under Part 13, Class B (f) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

Signed

Grahame J Kean

Inspector

Date:12 May 2026
Reference: APP/X4725/X/24/3355092

First Schedule

Ground Mounted Solar Array, on operational land at Wastewater Treatment Works (WWTW) at Castleford with installed generating capacity of up to 354kW connected to the WWTW via underground cables.

Second Schedule

Castleford Wastewater Treatment Works, Wheldon Road, Castleford, WF10 2PP

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.

Planning Inspectorate

Plan

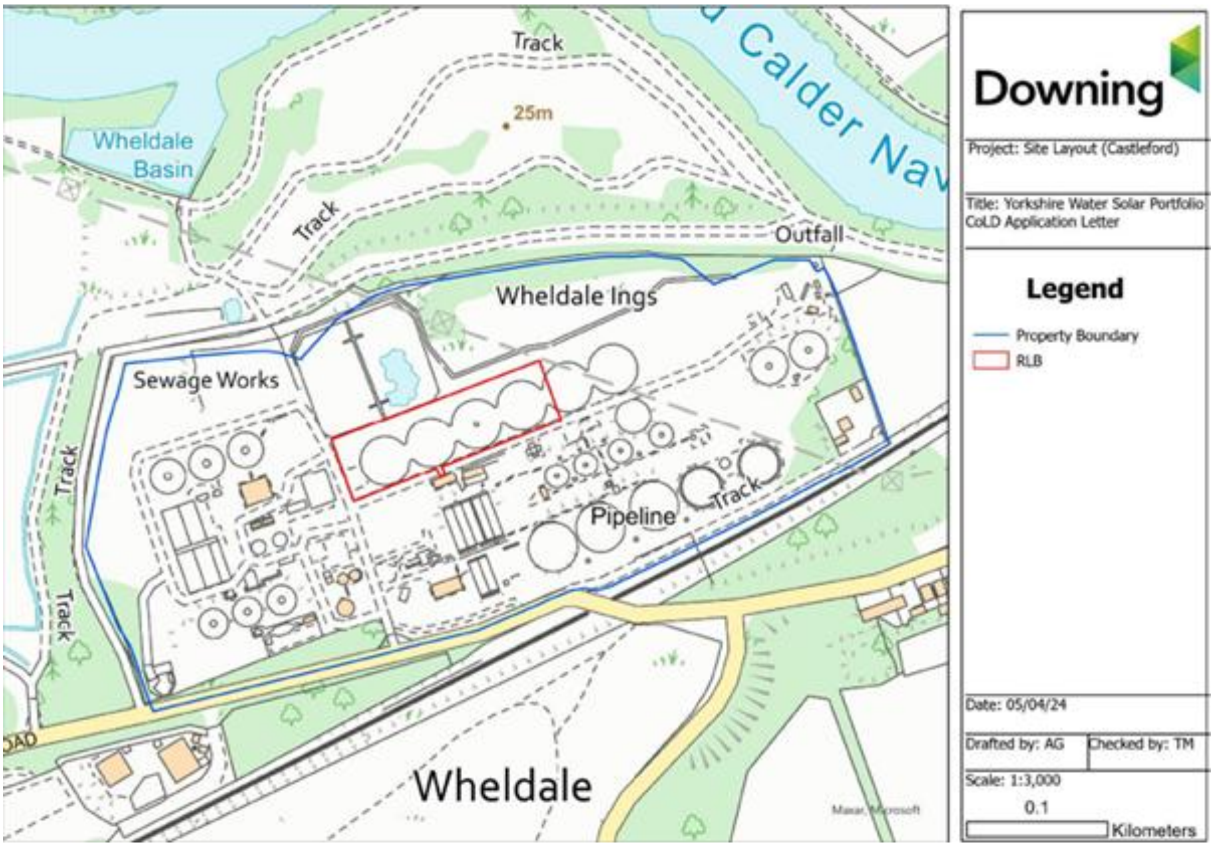
This is the plan referred to in this decision dated:12 May 2026

by Grahame J Kean

Land at: Castleford Wastewater Treatment Works, Wheldon Road, Castleford, WF10 2PP

Reference: APP/X4725/X/24/3358092

Scale: Not to Scale



Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
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The proposed development is considered to be permitted development under Part 13, Class B (f) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

Signed

Grahame J Kean

Inspector

Date: 12 May 2026
Reference: APP/X4725/X/24/3358091

First Schedule

Ground Mounted Solar Array including installation of underground cabling, and associated works at Yorkshire Water owned Dewsbury WTW.

Second Schedule

Land at Dewsbury Wastewater Treatment Works, Dewsbury, WF12 9BB

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.

Planning Inspectorate

Plan

This is the plan referred to in this decision dated:12 May 2026

by Grahame J Kean

Land at: Dewsbury Wastewater Treatment Works, Dewsbury, WF12 9BB

Reference: APP/X4725/X/24/3358091

Scale: Not to Scale