Planning Inspectorate

Appeal Decision

Site visit made on 13 November 2026

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

an Inspector appointed by the Secretary of State

Decision date: 16 November 2026

Appeal Ref: APP/C1760/X/25/3368292
The Water Tower, St Peters Close, Goodworth Clatford, SP11 7SF

- 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 Mr Joe Li against the decision of Test Valley Borough Council.
- The application ref 25/00399/CLEN, dated 19 February 2025, was refused by notice dated 18 June 2025.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is use under Class E(g)(iii) - Industrial processes - Except where not suitable in a residential area.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for an award of costs was made by Mr Joe Li against Test Valley Borough Council. This application is the subject of a separate decision.

Reasons

3. Planning permission is granted for certain development, including changes of use, under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (Order).

4. On the edge of the village of Goodworth Clatford, adjacent to the church, is an unusual wooden clad water tower standing in a field, said to be erected in 1936. Success of the appeal depends on establishing the lawful pre-existing use of the water tower to have been an agricultural building. Class R of Part 3 of Schedule 2 to the Order concerns changes of use from agricultural buildings to a commercial use, here sought to be declared lawful.

5. Under Class R a change of use of a building and any land within its curtilage, from a use as an agricultural building to a flexible use falling within *"…(iv) Class E (commercial, business or service) of Schedule 2*" is permitted development.

6. However, development is not permitted to the extent set out at Class R.1: if (a) the building was not used solely for an agricultural use as part of an established agricultural unit: (i) on 3rd July 2012; (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or (iii) in the case of a building which was brought into use after 3rd July 2012, for a period of at least 10 years before the date on which development under Class R begins.

7. The application was made on 19 February 2025. It was said that the ongoing use under Class E(g)(iii), as applied for, had begun on 1 February 2024. However, the application form states the existing use of the site is agricultural, not Class E(g)(iii).

8. The appellant's case is that the agricultural use of the site was accepted by the Council, evidenced by a senior planning officer's email dated 19 May 2020. The email refers to an earlier email dated 15 May 2020 from a planning agent to which the officer had replied "*I note that the change of use was not implemented and therefore the lawful use of the tower remains agricultural. Please accept this email as an acknowledgement of your notification*."

9. The email of 15 May 2020 is not supplied. Whatever the purport of the notification sent to the Council at the time, the Council's statement cannot be taken to found an estoppel as to the planning status of the land in question. Nor can a legitimate expectation arise as to lawfulness. It is well established that only a formal decision, in the exercise of statutory powers relating to LDC applications would be a conclusive assessment of the status of a use.[1]

10. In addressing the factual question "whether the water tower is in agricultural use" in the sub heading of that name in his statement, the appellant refers to much irrelevant material. However, the parish council's consultation response of 12 March 2025 is highlighted. It included the following:

    "the water tower was built in 1936 with a pump and well which is still capable of operating today. It was designed to supply water to the agricultural fields around the village. It forms an important part of the cultural and historical heritage of Goodworth Clatford being so closely linked to our agricultural roots."

11. The Council has resiled from its statement that in 2015 the water tower supplied water to the Golf Club. The correction was made after the tower's owner informed the Council that he had owned the water tower since 2014 and never supplied water to the golf club or to anyone. It was not stated what the actual use of the property was at that time.

12. The remaining part of the Council's statement has it that "*previous investigations of the site…have indicated that the water tower was, in 2006, still in use as a water tower*." The officer report dated April 2025 summarises several consultation replies. The impression gained is that there has not been an active use of the building in recent years. There is no planning history that provides clarity on what is the existing use or, which would be important to establish to meet the Class R.1 limitations, evidence of any link to an agricultural unit or holding.

13. In 2018 when a planning application[2] to retain an access yard for agricultural vehicles was refused, the Council says there was "commentary" that the building was "*a former water tower which is not being used for any purpose".* It was noted then that the building was covered in scaffolding. The officer report refers to the scaffolding as still in place, overgrown with vegetation and no suggestion the water tower was in use. It was added that "*the ground floor windows were covered in dirt, debris sprawled around outside the tower and no sign of an appropriate entry into the building was seen, with no pathway or "beaten track" indicating use*". There was no scaffolding in place when I visited the site.

[1] See for example, Flattery v Secretary of State for Communities and Local Government [2010] EWHC 2868 (Admin)
[2] Ref 18/02758/FULLN

14. I have been referred to the Land Use Gazetteer (3rd ed) which apparently lists a water tower use as "sui generis unless ancillary to primary use." The issue however is fact sensitive. There is no other evidence submitted about the agricultural use claimed to have existed, dates when it occurred or last occurred, or evidence as to an agricultural unit with which it might have been associated.

15. An agricultural use is generally speaking a lawful use to which a developer may return. However, land once used for agricultural purposes, including use as a water tower in connection with surrounding fields, as may have been the case here according to the parish council's statement, if it then falls into disuse over several years its use for agricultural purposes could be said to have been abandoned.

16. It is not strictly necessary to consider the issue of abandonment however, as the time-related limitations on the specific change of use sought are not met. Each limitation in class R.1 is predicated on the appeal site being used solely for an agricultural use as part of an established agricultural unit on 3rd July 2012. There is no evidence in this appeal at least, that it was so used. Nor can it be pretended that the commercial use claimed for has gained immunity by the passage of time.

17. I conclude that the information available is insufficiently precise to show on the balance of probability that the building was in agricultural use as required by Class R in order to treat a change of use thereunder as permitted development.

Other matters

18. The parties dispute whether in 2024 the Council was apprised of a proposal to change the use of the water tower to a commercial use. Each side alleges disingenuity on the part of the other but there is no compelling evidence one way or the other. Even if the Council had received notice this would not have overcome the lack of information on the agricultural holding (if any).

19. Neither party mentioned, which the Council most certainly should have done, that there has been a previous enforcement appeal decision[3] on 20 March 2020 about unauthorised gravel hardstanding around the water tower. The decision upheld the notice which required Mr Joe Li to restore the land with grass and wildflowers[4], but what should have been recorded for the purposes of this appeal were certain potentially relevant findings made by the Inspector, including that he had been given "*very little evidence about occupation of the building or its business use*".

Conclusion

20. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development is 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).

Grahame J. Kean

INSPECTOR

[3] Appeal A: APP/C1760/C/19/3230794 Appeal B: APP/C1760/C/19/3230795 20 March 2020, site inspection 16.3.2020
[4] The notice was not complied with and the Council prosecuted D C Li (Builders Ltd) who were fined £400 with £750 costs and a £40 victim surcharge, as well as being ordered to remove the unauthorised materials.