



Appeal Decision

Site visit made on 26 February 2020

by Simon Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 09 March 2020

Appeal Ref: APP/F9498/X/19/3223432

**Land adjoining Treborough Common South (south of Coldharbour),
Treborough, Watchet, Somerset, TA23 0QW**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mark Weatherlake against the decision of Exmoor National Park Authority.
 - The application Ref 6/35/18/102, dated 20 September 2018, was refused by notice dated 28 January 2019.
 - 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 the installation of wood chip dryer and associated machinery.
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Decision

1. The appeal is dismissed.

Reasons

2. In 2016 planning permission was granted for "*proposed additional use of agricultural and forestry buildings together with land for the installation and operation of wood chip powered combined heat and power system. As per additional information 05.08.16*" (reference 6/35/16/102). This was slightly altered in 2017 with a new planning permission (6/35/17/101) "*retention of extension and other alterations on the combined heat and power plant building together with the proposed raising of roof on part of wood chip storage building (part retrospective). As per additional information 30.01.17*".
3. The 2016 permission was subject to a number of conditions one of which is (and I paraphrase) "...the premises the subject of this permission shall not be used other than for the operation of a woodchip powered combined heat and power system, for forestry purposes or for agricultural purposes..". The 2017 permission was also subject to a number of conditions one of which was (again paraphrased) "...the premises, edged in red on the approved plan stamped by the Local Planning Authority as "FILE No. 1" shall not be used other than for the operation of a woodchip powered combined heat and power system, for forestry purposes or for agricultural purposes...".
4. The purpose of these conditions was presumably to limit the CHP system to use on the farm holding of the appellant only.

5. The current application is for a LDC for a wood chip dryer and associated machinery which the appellant argues is permitted development under Part 7 Class I of the GPDO. Part 7 is headed "*Non-domestic extensions alterations etc*". Class I is headed "*developments related to an industrial process*". Thus any planning permission granted through compliance with this part must relate to an '*industrial process*'. This is further made clear in the description of development that is permitted (and I quote the relevant section) "*Development carried out on industrial land for the purposes of an industrial process consisting of— (a) the installation of additional or replacement plant or machinery*". Thus this part can only relate to development that is both on '*industrial land*' and is for the '*purposes of an industrial process*'. The question for this appeal is therefore whether the wood chip dryer is being used for the purposes of an industrial process and whether it is on industrial land.
6. An interpretation of Class I is contained at I.2 which says "*for the purposes of Class I, "industrial land" means land used for the carrying out of an industrial process, including land used for the purposes of an industrial undertaking as a dock, harbour or quay but does not include land in or adjacent to and occupied together with a mine*".
7. The appeal site is not a dock, harbour or quay and so it can only be considered to be industrial land if it is being used for an industrial process. For the purposes of permitted development rights an industrial process is defined in paragraph 2 of the Order as "*'industrial process' means a process for or incidental to any of the following purposes— (a) the making of any article or part of any article (including a ship or vessel, or a film, video or sound recording); (b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or (c) the getting, dressing or treatment of minerals in the course of any trade or business other than agriculture, and other than a process carried out on land used as a mine or adjacent to and occupied together with a mine*".
8. Quite clearly the current use of the land is either for a CHP plant which uses woodchips as its fuel or it is part of a wider agricultural use. The Land Use Gazetteer defines wood burning for energy generation as a B2 land use and class B2 is "*use for the carrying on of an industrial process other than one falling within class B1 above*". Industrial process is defined in the Order in the same way as in the GPDO. The Gazetteer is advisory only and I cannot think why it should define CHP as industrial. No article is made, altered, repaired etc and no mineral got, dressed or treated. Therefore it cannot be industrial but must be a sui generis use and so does not fall within the ambit of Class I. I also note that none of the conditions on the original planning permission refer to an industrial process but describe the use as a combined heat and power plant.
9. Class O of Part 14 is the only mention I can find in the GPDO concerning CHP on non-domestic premises and that refers only to the installation of a flue. It would seem therefore the proposed wood chip dryer is outwith the ambit of the GPDO altogether and so cannot be permitted development.
10. As this argument was not raised in the written representations both parties were offered a chance to comment. The appellant confirmed the CHP plant was designed to provide power to the electricity grid and does not seem to be

for agricultural purposes which suggests they are correct there is no mixed use on the site. However, the question of the mixed use is somewhat of a red herring as the issue is what Class does the use fall into. In this case I do not consider the CHP is a B2 use.

11. In conclusion therefore I consider the proposed woodchip dryer is not related to an industrial process because a CHP plant is not such a process and the land on which it is placed is not industrial land. The development proposed is not permitted development and I shall dismiss the appeal.

Simon Hand

Inspector