

Ward Newbridges

Reference 19/1066/FUL

Applicant Mr & Mrs SR & CA Perry

Location Nower Dairy Kilmington Axminster EX13 7HD

Proposal Construction of earth lined slurry lagoon



RECOMMENDATION: Approval with conditions

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		Committee Date: 1st October 2019
Newbridges (Kilmington)	19/1066/FUL	Target Date: 29.07.2019
Applicant:	Mr & Mrs SR & CA Perry	
Location:	Nower Dairy Kilmington	
Proposal:	Construction of earth lined slurry lagoon	

RECOMMENDATION: Approval with conditions

EXECUTIVE SUMMARY

This application is before Members as the officer recommendation is contrary to the view of the Ward Member.

The proposal is to construct an earth-lined slurry lagoon to contain 4 months' worth of the slurry produced by a dairy herd. This is intended to help the operators of the Dairy to store more slurry during the winter, reducing the need to spread slurry during the months when the risk of water pollution associated with the spreading of slurry is highest, in line with best practice advice from the Environment Agency.

The lagoon would be constructed on gently sloping land adjacent to agricultural buildings using a cut and fill method, with on-site soils being used to provide an impermeable liner, avoiding the need to import soil materials from elsewhere. As such, traffic movements associated with the construction would be relatively low.

The site is in the countryside and the Blackdown Hills AONB, however it would not be widely visible and the landscape officer raises no concern regarding the impact on the surrounding AONB landscape.

The Parish Council support the proposal, however neighbours and the Ward Member raise concerns that the lagoon could leak (if poorly constructed) or be damaged by springs in the area, with the risk that groundwater could be contaminated. This is raised as a particular concern because several local dwellings abstract private water supplies from groundwater at locations nearby.

The application is supported by a feasibility assessment (produced by an independent agricultural advisor) describing the soils present at the site and the lagoon construction method. The laboratory test result of the permeability of the proposed liner soil has also been provided.

The Environment Agency have been made aware of the concerns relating to private water supplies and consulted on all the information supplied, including the location of abstraction points as indicated by objectors. The Environment Agency have indicated the Regulatory Controls which relate to the construction and maintenance of slurry lagoons and the prevention of Nitrate pollution and that there is a requirement for them to be notified by the applicant 14 days prior to the commencement of lagoon construction. They have raised no objection to the proposal. The planning system cannot seek to duplicate other existing regulatory controls and it is considered that given that specific controls are in place and administered by the Environment Agency, the pollution risk to ground and surface waters would adequately addressed and controlled.

It is not considered that significant impacts would arise in relation to traffic or odour. Given that the proposal is a pollution prevention measure which would support the improved environmental operation of an agricultural enterprise, with associated economic and environmental benefits, it is considered overall that the proposal represents sustainable development which should be approved.

CONSULTATIONS

Local Consultations

Parish/Town Council

5.7.19

Kilmington Parish Council resolved at a meeting on the 25th June 2019 to have NO objection to this application subject to the Environment Agency report supporting the need for the application and the correct construction.

Newbridges - Cllr Iain Chubb

30.7.2019

This application looks straightforward and would normally be the case, however there is a rather large problem with the land in question having spoken to the farmer who owns and has farmed the land for decades to raise concerns over this application. The amount of slurry being produced and imported in is also a big question, and the quality of the ground that the is proposed to site the lagoon on as tests have been carried out but no results have been divulged. The land in question is also at the head of many private water supplies who will be adversely affected by this slurry lagoon.

I therefore think that this application needs a lot more questions to be answered and I would prefer this application to be dealt with by the planning committee rather than being signed of at a delegation meeting. This would hopefully bring all the facts to the table and searching questions can be asked and hopefully answered.

I therefore cannot support this application as it stands and would request it goes to DMC.

Technical Consultations

Environmental Health

29.8.19

I have not raised any concerns in relation to this application and this remains the case because the issues raised are not within our remit in environmental health. The need for the lagoon had been identified by the Environment Agency, along with the engineering design. The concerns of local landowners which were raised in the first consultation period and which were independently copied to me have been considered by the Environment Agency. They have now assured local residents that the pit design has taken the ground conditions into account and that neither properties nor ground water would be put at risk.

We do not usually receive complaints or concerns from people living near to existing lagoons. They are designed and used in such a way that surface disturbance is minimal other than when the lagoon is being emptied and any odours would be regarded as usual for a livestock operation, particularly dairy farms where slightly odorous slurry is normal. It is only where a change of use introduces a potential odour source that would not be considered usual for the premises that we would raise the question. This is not the case in respect of this application.

County Highway Authority

26.6.29

Observations:

The site is located on the X718.

The proposed lagoon is 10 metres away from the county highway network, so if a breach should occur this will have minimal impact upon the highway network. The lagoon is predominantly a cut feature and therefore the cross-section should not impact upon the highway integrity.

Therefore the County Highway Authority has no objection to this planning application.

Recommendation:

THE HEAD OF PLANNING, TRANSPORTATION AND ENVIRONMENT, ON BEHALF OF DEVON COUNTY COUNCIL, AS LOCAL HIGHWAY AUTHORITY, HAS NO OBJECTION TO THE PROPOSED DEVELOPMENT

Landscape Architect

24.07.19

Having visited the site and surrounding area I am satisfied that there are no significant landscape or visual impacts arising from the proposed scheme and consequently I have no objection on landscape grounds.

Should the application be approved I would recommend that a condition be included requiring that the perimeter bunding is turfed with turfs set aside from excavations or, if it is to be seeded, that the proposed grass seed mix is selected to reflect the species mix of the surrounding field in order to help blend the slopes in to the landscape.

Environment Agency

24.6.19

Thank you for consulting us on this application.

Environment Agency position

We have no objection to the proposed development. The applicant should ensure that the work proceeds in accordance with the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) Regulations 2010 (SSAFO) and the storage requirements of The Nitrate Pollution Prevention Regulations 2015, commonly known as the NVZ regs.

Advice - The SSAFO and NVZ regulations aim to prevent pollution from stores of silage, slurry and agricultural fuel oil. They set out requirements for the design, construction and maintenance of new facilities for storing these substances. Site operators should ensure that there is no possibility of contaminated water entering and polluting surface or underground waters. Further information can be accessed via the following web link:

<https://www.gov.uk/storing-silage-slurry-and-agricultural-fuel-oil>

The SSAFO Regulations also require that the Environment Agency is notified 14 days prior to the commencement of construction of a new, reconstructed or enlarged slurry store, silage clamp or fuel stores. More information can be obtained via the following link:

http://www.ruralhubpartnership.co.uk/nvz_new_regualtions_and_change_to_ssafo

We advise that farmers can use up to 5,000 tonnes of suitable imported waste clays for the bunding of slurry stores by registering an exemption U1 and following the conditions. Further advice is available from our website via the following link: <https://www.gov.uk/waste-exemptions-using-waste>

Further comments 13.8.19:

Thank you for reconsulting us on this application.

Environment Agency position:

We have no objection to this proposed development.

Reasons:

We refer to our previous response (dated 24 June 2019 ref: DC/2019/120658/01-L01) to reiterate that the applicant should ensure that the work proceeds in accordance with the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) Regulations 2010 (SSAFO) and the storage requirements of The Nitrate Pollution Prevention Regulations 2015, commonly known as the NVZ regs.

The Environment Agency normally oppose the establishment of new storage areas for organic manures (farm yard manure, sewage sludge, slurry and other organic manures) within SPZ1 or within 50 metres of any borehole, well or spring. However, we understand that the nearest property to the farm is over 500 metres away and we are not aware of any abstractions within that area and no evidence has been provided to contradict this.

We also have confirmation that the potable abstraction that was contaminated a few years ago was from surface runoff and not leaky infrastructure. We have no record of this being reported to Environment Agency at that time either.

It is worth noting that no enforcement notice has been issued for this property or site although our Environment Officers have liaised with the applicant to advise on best practice and the legal requirements.

We are confident that the consultant, who we understand to be Bob Watson, is a highly credible expert in the creation of slurry storage management and their creation. The test pits mentioned in your correspondence would have been overseen by a qualified consultant and as a result it is our opinion that the applicant meets all of our criteria to allow this development to continue. As such we have no reason to object to this proposal.

Advice:

The SSAFO and NVZ regulations aim to prevent pollution from stores of silage, slurry and agricultural fuel oil. They set out requirements for the design, construction and maintenance of new facilities for storing these substances. Site operators should ensure that there is no possibility of contaminated water entering and polluting surface or underground waters. Further information can be accessed via the following web link:

<https://www.gov.uk/storing-silage-slurry-and-agricultural-fuel-oil>

Other Representations

8 objections to the proposal have been received raising the following concerns (note that only concerns relating to the proposed development are listed here):

- The scale of the lagoon is excessive and not needed as there is already a concrete lined slurry pit at the site which has been sufficient for many years;
- The farm is run by tenants who rent additional farmland, and their current tenancy ends in September 2023. The main landholding of 193 acres does not support a herd size which triggers the need for the lagoon, therefore the lagoon will not be necessary and proportionate in the future if the agricultural practices at the holding change;
- The lagoon will be used for imported slurry which is unjustified;
- The proposal would contaminate nearby streams, rivers, springs and their catchment areas and a flood risk assessment should have been provided;
- The proposal poses a pollution risk to an underground aquifer/spring network within 50 m of the proposed slurry lagoon with public health implications from slurry contamination of private spring water supplies above and below the level of the lagoon, relied upon by several dwellings;
- The ground within the site is complex and springs are likely to be encountered at the construction site;
- The soil type and condition is unsuitable for the proposal and could be subject to slippage, such that a full geotechnical survey is required;
- Sewage will leak into the water table if the lagoon is only earth lined as this is unlikely to provide a reliable, secure barrier. Plastic or preferably a concrete liner should be used instead;
- The submitted feasibility report is subjective and has not been independently verified

- There are no guarantees that the lagoon would not fail, that sufficient clay would be available, or that sand would not become mixed with the clay liner, reducing its effectiveness as an impermeable barrier;
- The soil permeability test results have not been published (Note that since this point was raised the test results have been published);
- The Environment Agency guidelines are generic and there is no assurance that the applicant will meet the SSAFO regulations or that compliance will be monitored. A condition should be imposed to require inspection by the Environment Agency and to allow residents to inspect the site;
- Slurry tankers and construction traffic would have an adverse impact on Nower Road, which is already in poor condition;
- The proposal would have a detrimental impact on the dwelling at Nower Farmhouse;
- The proposal will have an adverse visual impact on the AONB.

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

D7 (Agricultural Buildings and Development)

EN5 (Wildlife Habitats and Features)

EN14 (Control of Pollution)

TC7 (Adequacy of Road Network and Site Access)

Government Planning Documents

NPPF (National Planning Policy Framework 2019)

National Planning Practice Guidance

Other Documents

Blackdown Hills AONB Management Plan 2019 - 2024

The emerging Kilmington Neighbourhood Plan - no draft is currently available

The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 (as amended 2013) ('SSAFO')

Nitrate Pollution Prevention Regulations 2015 (NVZ regs)

Site Location and Description

The site lies outside of any Built-up Area Boundary and is thus in the countryside in planning terms. It is a rectangular area in a grassed field, approximately 14 m to the north of an unclassified road and immediately to the east of a group of agricultural

buildings. The ground within the site slopes down towards the southeast although the wider context of the site is the shoulder of a hill, with surrounding land sloping down towards the east, through to the south and southwest. The site is within the Blackdown Hills AONB.

The nearest dwellings include Nower Farm and an annexe, approximately 66m to the southwest and Nower Dairy Farm (the applicant's dwelling) approximately 170m to the northwest. A public footpath lies approximately 194m to the west of the site, terminating on the southern side of the road which runs past the southern edge of the site.

Proposal

The application proposes the construction of an earth lined slurry lagoon.

The applicants are tenants of the holding known as Nower Dairy which comprises 193 acres and operates as a dairy unit, milking 150 to 170 cows and rearing replacements. The proposed slurry lagoon is to provide for an additional 4 months of slurry storage (there being a small slurry lagoon already at the site capable of storing slurry produced in 1 month) whilst cattle are winter housed. It is stated that the existing lagoon at the site this does not have sufficient capacity to satisfy Environment Agency requirements and that the additional lagoon is intended to help address diffuse pollution issues in the Corry Brook catchment. The lagoon would be constructed by 'cut and fill' and clay lined using on-site materials, without the importation of soil.

During the course of the determination soil test results and further comment from an independent agricultural advisor, indicating that one of the soil types on-site would be suitable as an impermeable liner, have been provided. The applicants have also submitted additional information which states that they do not bring in slurry from elsewhere and that they have been issued with a Notice by the EA to the effect that they cannot continue to keep dairy cows from October 2019 without having at least 4 months slurry storage capacity. They explain that storage of slurry over winter avoids slurry spreading on land in winter months, when risk of surface water pollution through rainfall run-off is greater and that spreading at other times has other environmental benefits in that it enables the more effective use of slurry as a natural soil fertiliser and reduces soil compaction in fields.

Notwithstanding that the proposed development is in an area described as a 'sensitive area' in the Regulations (as it is within an AONB) the proposed development is not one of the development types listed in Schedules 1 or 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 as it is not itself an intensive agricultural operation (which would result in the production or increase of waste in itself), rather it is an improved management system for the existing waste produced on the farm. Therefore the proposal does not require an Environmental Statement.

ANALYSIS

The main issues for consideration include the principle of the proposal, pollution, visual impact and impacts on local amenity.

Principle

Agricultural development is supported in principle through policy D7 where there is a genuine agricultural need for the development and several criteria are met.

With regard to need, it is accepted that the provision of a slurry lagoon on a livestock farm is often encouraged by the Environment Agency as these structures can help reduce water pollution through providing for storage of slurry during certain months of the year, so that it is not spread at the times of the year when the risk of surface water run off mixing with slurry is higher.

The Environment Agency indicate that no enforcement notice has been issued in relation to Nower Dairy but that their officers have advised the applicant on best practice and legal requirements.

Given the accepted benefits of slurry storage, there is no reason to consider other than there is a genuine agricultural need for the lagoon, particularly given that there is cost and effort involved in seeking planning permission for it and constructing it, and that a slurry lagoon would be unlikely to be suited to other uses.

Objectors indicate the lagoon is excessive in size for the tenanted holding and that the need for the lagoon may change in the future. However, there is no evidence of this with the applicant having calculated the size of the lagoon needed to cater for the 4 months and has confirmed that slurry would not be imported. If it were to be imported from other farms, a breach of planning would have occurred as slurry imported to the site from a separate agricultural operation would be defined as a waste requiring further planning permission relating to the deposit or processing of waste.

It is considered that the specific size of lagoon need not be overly restricted, particularly as the size of the holding may change in the future, and as the longer the slurry is stored the less likelihood there is of wider pollution.

It is therefore considered overall that the agricultural need for the lagoon proposed is genuine and that the proposal is acceptable in principle. The other criteria of Policy D7 are discussed under separate headings below.

Pollution

The concerns of objectors with regard to slurry leaking from the lagoon and the impacts this could have on private water supplies and a surface waters are noted and understood.

Whilst the impacts of a development upon impact on a private water supply would be a civil matter rather than a planning matter, the pollution of ground and surface waters are material planning considerations. It is acknowledged that, in certain circumstances, slurry could pollute ground and surface waters, however, it is understood that the lagoon proposal has come about as a response to best practice advice on slurry management to reduce pollution risk, provided to the applicant by The Environment Agency, a regulatory body whose stated purpose is the protection and

enhancement of the environment. It is also clear that storing slurry securely at certain times of year can help to reduce pollution of the wider environment.

The applicant has provided a feasibility study and soil test result in support of the application which describes the soil profiles at the site, the permeability of the soil proposed to be used as a liner (with a comment on its acceptability) and sets out how the lagoon would be constructed. The measured permeability of the soil tested is noted to be less than (i.e. better than) the maximum figure set out in published Government Guidance "Guidance - Storing silage, slurry and agricultural fuel oil (SSAFO) - Rules you must follow, who's responsible and when to notify the Environment Agency".

The Local Planning Authority have made the Environment Agency aware that private water supplies are drawn from boreholes and capped springs near the site and their attention has been drawn to objectors' comments which describe where these are located. The Environment Agency indicate they normally oppose new slurry stores within 50m of any borehole, well or spring or within Source Protection Zone 1. An assessment of the information provided by objectors found that no capped spring or borehole is located within 50 m of the proposed lagoon. It is also noted that the site is also not within Source Protection Zone 1. It is further acknowledged that the Environment Agency have wrongly stated that there are no properties within 500m of the lagoon, but the key distance is that there are no capped springs or boreholes within 50m.

In their initial consultation response the Environment Agency indicate that SSAFO and Nitrate Pollution Prevention (NVZ) Regulations aim to prevent pollution from slurry (in addition to other substances) and that the regulations set out requirements for the design, construction and maintenance of new facilities for storing slurry. They also indicate that the SSAFO Regulations require them to be notified 14 days prior to the commencement of construction of a new, reconstructed or enlarged slurry store.

It is noted that objectors are concerned that the construction of the slurry lagoon may not be properly carried out and that subsequently the lagoon could leak. However given what the Regulations referenced above set out to achieve, the role of the Environment Agency in administering them and the opportunity afforded to them to oversee the works following 14 days' notice of commencement being given to them, it is considered that there are adequate controls in place to ensure that the slurry lagoon would be constructed to required standards. Planning controls must not duplicate other existing regulatory controls, and it is therefore not considered reasonable or necessary to impose planning conditions to require that the Environment Agency inspect the works or to require that access be afforded to residents to inspect them, as suggested by an objector. Following 2 rounds of consultation the Environment Agency have raised no objection to the proposal.

It is therefore considered overall that pollution risk would be controlled and that there are no reasonable grounds on which to require further information from the applicant or to impose conditions relating to the construction of the lagoon.

Local Amenity

There is the potential for the lagoon to impact on residential amenity in relation to odour, however the proposal is located immediately adjacent to agricultural buildings where livestock are kept and there is an existing slurry store closer to the nearest dwelling than that which is now proposed. Environmental Health have been consulted on the proposal, including specifically in relation to potential odour issues) and raise no objection. It is therefore concluded that the proposal would not give rise to an unacceptable impact on local amenity.

Visual Impact

The proposal is on a gentle slope near the top of a hill and where visible at close range, this would be from limited viewpoints close to the Dairy, where the lagoon would be seen in the immediate context of a large group of agricultural buildings. It would not be particularly discernible from more distant viewpoints.

Having visited the site and surrounding area the Landscape Officer is satisfied that there are no significant landscape or visual impacts would arise from the proposed scheme and consequently no objection to the proposal is raised in terms of harmful visual impact and impact on the AONB. The landscape officer has recommended that if approval is granted, a landscaping condition should be imposed to ensure that the appearance of the perimeter bunding blends well with the surrounding landscape.

Due to existing buildings and hedgerows, the slurry lagoon would not be highly visible from the right of way and bridleway to the west of the site. Any view of the lagoon would take in the context of the large group of agricultural buildings immediately adjacent to it, which would be in closer proximity to the right of way than the lagoon. The impact on the amenity of the right of way would also be negligible.

Other issues

Objectors indicate that the construction works and the movement of slurry on the road adjacent to the site would damage it. However, whilst there may be traffic movements on the local road network associated with lagoon construction, these are likely to be limited to a low level, given that materials to construct the lagoon would not be imported. It is noted that no objection has been raised by the County Highway Officer. Neither is it likely that the provision of the lagoon would itself significantly alter the number of farm traffic movements necessary to spread slurry on the land, although such movements may occur over different months than they would have if the lagoon was not available.

An objector is concerned that a flood risk assessment has not been provided, however the site is not within a flood risk zone and is less than 1 hectare in area, so an assessment was not required.

No protected or important wildlife habitats or features are likely to be affected by the proposal. Through reducing pollution risk, the proposal would help to protect aquatic wildlife in surface waters in the vicinity.

CONCLUSION

Taking into account the regulatory controls in place relating to the construction of slurry lagoons, it is considered that the proposed lagoon would enable slurry to be managed at Nower Dairy with a reduced risk of ground and surface water pollution, which would help to support the continued operation of an agricultural enterprise and the local agricultural economy, in addition to bringing about environmental benefits.

The size of the lagoon has been justified by the applicant and would not have an unacceptable impact on the surrounding AONB landscape, on residential amenity or on highway safety.

As such, the proposal is considered to be acceptable.

RECOMMENDATION

APPROVE subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved.
(Reason - To comply with section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.
(Reason - For the avoidance of doubt.)
3. The perimeter bunding around the lagoon hereby permitted shall be turfed with turfs set aside from excavations or, if it is to be seeded, the proposed grass seed mix shall be selected to reflect the species mix of the surrounding field.
(Reason: To help blend the bunded slopes in to the landscape and in accordance with Strategy 46 Landscape Conservation and Enhancement and AONBs and Policies D2 Landscape Requirements and D7 Agricultural Buildings and Development).

NOTE FOR APPLICANT

Informative:

In accordance with the requirements of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 in determining this application, East Devon District Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved.

Plans relating to this application:

	Location Plan	29.05.19
2052/2	Proposed Site Plan	17.05.19

2052/3

Sections

17.05.19

List of Background Papers

Application file, consultations and policy documents referred to in the report.