

Ward Newbridges

Reference 19/1066/FUL

Applicant Mr & Mrs SR & CA Perry

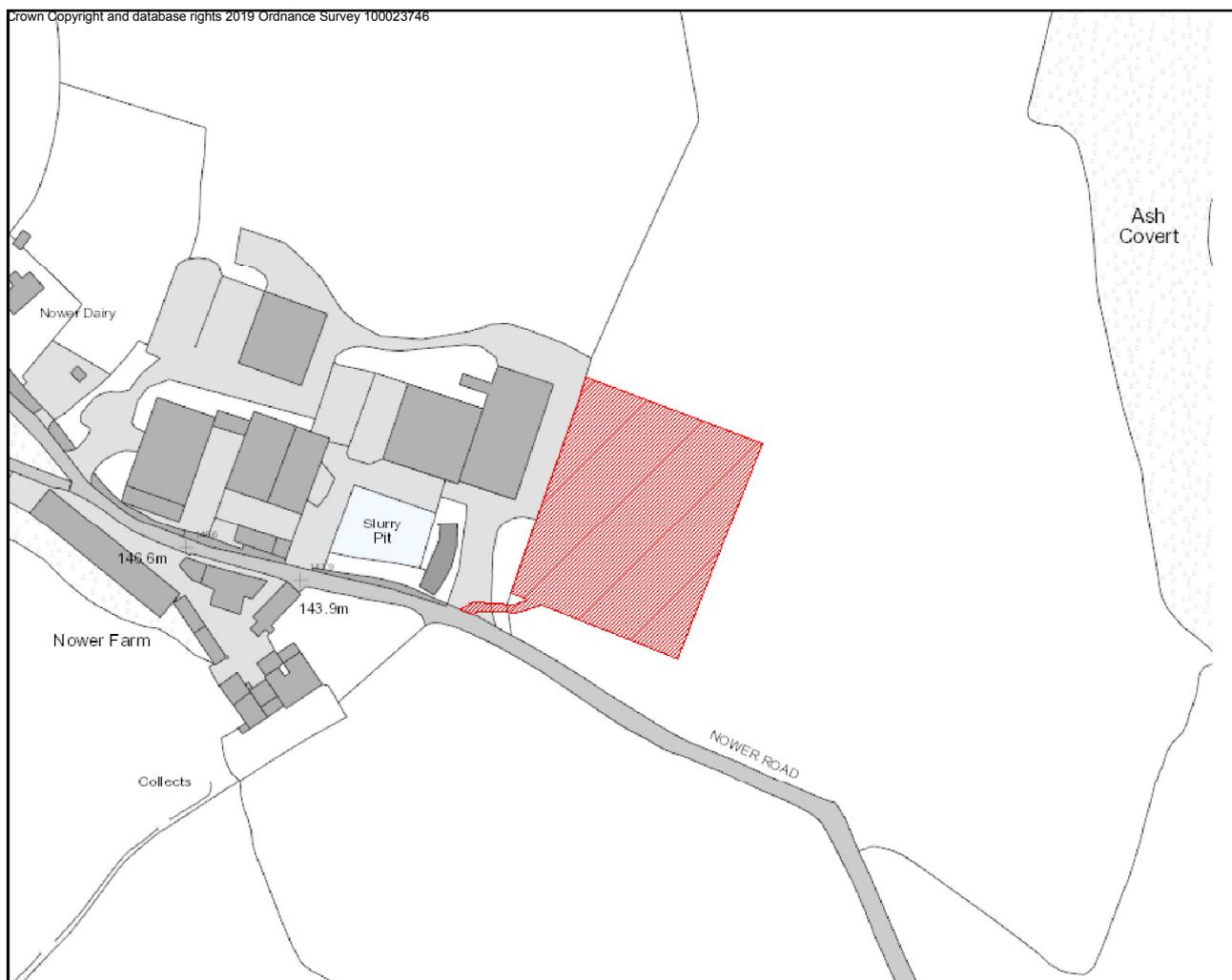
Location Nower Dairy Kilmington Axminster EX13 7HD

Proposal Construction of earth lined slurry lagoon



RECOMMENDATION: Approval with conditions

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		Committee Date: 3rd December 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

UPDATE REPORT

This application was originally presented at the Development Management Committee meeting on 1st October 2019. At that time a decision was taken to defer determination of the application to allow officers to obtain further information from the applicant and the Environment Agency (EA).

Subsequent to the meeting an objector circulated an email to members setting out specific concerns with regard to the proposed design of the slurry lagoon and the CIRIA C759 guidance, which had also been raised at the meeting. In addition, a further letter of objection has been received raising concerns with the proposal and lack of compliance with non-planning regulations.

As a result of Members decision, the questions subsequently put to the applicant were as follows:

- How does the proposal comply with CIRIA Guidance C759b relating to slurry lagoon construction?
- Where are water courses and supplies located in relation to the site?
- Could a concrete lined lagoon be considered instead of the type of lagoon proposed?

The applicants were also invited to provide more information regarding the need for the lagoon, given that they are an agricultural tenants and that the farm owner objects to the proposal.

Further comment was also sought from the EA as to why they were not requiring a concrete slurry lagoon lining, as recommended (in specific circumstances) in the CIRIA Guidance.

The comments received from the applicant in a letter with an annotated extract from the CIRIA 759b Guidance and a map of water extraction locations in the area can be summarised as follows:

- The consultant employed to provide advice on lagoon design (Bob Watson) co-authored the CIRIA 759b Guidance and has a thorough knowledge of it. The combination of his experience and that of the Environment Agency should hold value with the Planning Committee.
- In the terms of that guidance, the proposed lagoon is an 'earth banked' lagoon, not a 'lined lagoon' as stated by the objectors. As such the guidance for a 'lined lagoon' does not apply to this proposal;
- Whilst that guidance shows that concrete stores may be suited to where sand bedding is used and in high water table areas, it also indicates that earth banked lagoons are suitable in those circumstances;
- Sufficient soil of suitable permeability is available on site from which to construct the lagoon. The soil is three times less permeable than the minimum recommended;
- A concrete lagoon would be prohibitively expensive and is not proposed as it is not the only suitable solution possible. It will also spoil the landscape;
- Across all five test pits dug, the water table lies below the level to be excavated down to, to form the proposed lagoon, however if groundwater is identified where it would coincide with the lagoon, it can be diverted or the lagoon remodelled;
- There is no stream between the proposed site of the lagoon and Nower Road and no capped spring close to the northwestern side of Nower Dairy as has been alleged;
- The emptying and stirring techniques to be used would ensure that the lagoon would not be damaged in use. The mechanical stirrer would access the lagoon via a concrete ramp and pad to protect the lagoon from damage;
- Our landlord does not accept the Environment Agency's requirement for 4 months storage and objects to the number of animals we keep as he refutes economics of modern farming. There would be a case to say the landlord should have provided this slurry provision when we took over the farm as the regulations were introduced in 2010.
- The landlord has presented us with a notice (on the 1st October 2019) that allows him to remove 33 acres from our holding. The business is based on a 10 year tenancy plan and currently 185 cows are milked, though the land included within the agricultural unit could support 200 milking cows. The loss of the 33 acres will not itself affect the number of livestock which could be kept at Nower Dairy in the longer term, as the existing buildings and dairy infrastructure would continue to support the current farming model and number of livestock;
- As only 1 month's slurry storage capacity is currently available, the EA could serve notice on the farm to reduce the herd size to 50, which would have a severe economic impact on the dairy unit, forcing it to cease operating. Given the dairy herd size which the agricultural unit could support, arguably slurry storage capacity should have been increased at Nower Dairy when the current SSAFO Regulations came into force in 2010 (prior to the commencement of the tenancy).

- The length of the applicant's tenancy should have no bearing on the planning decision. We have 4 years remaining and are required by the tenancy to comply with current legislation;
- It is within the applicant's interest to ensure that the lagoon construction complies with current legislation as compliance with current legislation is a condition of the tenancy, and the investment in the lagoon needs to be secure.

The answers provided by the applicant are considered to comprise a reasonable position and indicate that the applicant is fully aware of their obligations and need to ensure that a suitable facility is provided in accordance with the relevant legislation and requirements.

The EA comments received following the question put to them asking why there are not insisting upon a concrete lined lagoon are as follows:

16.10.2019:

'Further to your email on the 2nd October 2019, reference to the objection comments raised at the committee meeting, we have the following which confirms our position on this application.

Position

We have reviewed the objector's comments and recognise the concerns raised. Considering that the store is being designed to be impermeable, we have no concerns from a groundwater protection perspective. Your authority will need to consider whether this development is appropriate in his location and is in accordance with SSAFO regulations and CIRIA guidance. Please refer to our previous letter for more detail on SSAFO regulations.

Further Advice - Impermeable construction

We have investigated the points that the objector has raised and consider that the slurry lagoon, poses a very minimal risk to groundwater because it is proposed to be an impermeable structure. Therefore, there should be no pathway between the slurry itself and the groundwater, as a receptor, for any pollution risk. As a general note, if a member of the public was to witness a pollution incident in any location, they should report it to us on 0800 80 70 60.

I hope that this provides some clarity on the application. Please contact us again if you require any further advice.'

25.10.2019:

'It would be most accurate to say that it is the applicant's responsibility to comply with the SSAFO regulations, and a part of that is that they must notify the Environment Agency in writing about their intention to build a new store, or substantially enlarge or reconstruct an existing store at least 14 days before they start construction or reconstruction works.

We will have a role in the event that a pollution does occur. If the development is not in line with any planning approval that it may get, then it will down to your authority to enforce from a planning perspective. In addition, we can serve notice to stop the use of an unsuitable slurry store until it is improve or relocated. Further information on this specifically can be found here: <https://www.gov.uk/guidance/storing-silage-slurry-and-agricultural-fuel-oil#if-youre-served-a-notice>

I hope that clarifies the situation.'

15.11.2019:

Environment Agency position

We can confirm that we have no objection to the proposed development.

The purpose of this proposal is to ensure sufficient capacity for storage of slurry at Nower Dairy. Many farms have insufficient facilities for the storage of slurry which means it has to be spread at inappropriate times. This practice increases the risk of pollution to controlled waters and is a significant factor which contributes to nutrient failures in rivers in East Devon. Across the region we have been supporting farmers in improving their infrastructure to ensure there is appropriate storage on farms, which is in line with the SSAFO Regulations. With regard to the current proposal, we consider that the proposed new slurry lagoon should result in an environmental betterment over the current situation and reduce pollution risk to controlled waters including the Corry Brook.

In order to ensure you have sufficient information to determine this planning application we provide the following additional advice on the matters raised over the course of the application process for this proposal.

Further advice – Storage of slurry

Our position statements describe how the Environment Agency protects groundwater. 'H8 – Storage of organic manures on farms' states:

The Environment Agency will 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. The Environment Agency will maintain its opposition unless it agrees to site-specific measures that minimise the risk to drinking water supplies.

The proposed development does not establish new storage for organic manures within 50 metres of any borehole, well or spring. All water features identified by both applicant and objectors are greater than 50 metres from the proposed slurry lagoon. The presence (or not) of a default SPZ2 with a radius of 250 metres is not relevant to this policy statement.

Outside of SPZ1, we provide guidance on storing silage, slurry, and agricultural fuel oil to those who control such substances on farms. We help farmers to comply with this guidance to minimise discharges to the environment and

reduce the likelihood of them causing pollution. We expect farmers to demonstrate how their storage facility complies with the guidance.

Groundwater vulnerability maps are a guide only and summarise the geological mapping. The proposed site appears to straddle a geological boundary and therefore the aquifer classification may vary west to east. In the western half of the proposed lagoon, the site is underlain by Upper Greensand Formation. This has a designation of Principal Aquifer but, given its location close to the boundary, it is likely to have limited thickness and beyond the water features identified to the north-west, is not of strategic importance to a large population for drinking water or as a significant source of base flow to the Yarty or Corry Brook. The remainder of the site to the east, is underlain by the Blue Anchor Formation consisting of less permeable siltstones and mudstones, and is classified as Secondary Aquifer.

In addition to the above, as raised in our previous correspondence (email from Harriet Fuller dated 16 October 2019), the proposed earth-lined slurry lagoon will be an impermeable structure. Therefore, there should be no pathway between the slurry itself and any groundwater receptor. It is the responsibility of the operator to ensure that the facility to be properly maintained to over its lifetime to further minimise the pollution risks to controlled waters.

Advice to LPA – Consultation with Environmental Health

Before determining this application, we would advise you to consult with your Environmental Health team to ensure that they are satisfied with the development from a human health perspective.

We hope that this advice will help inform your Development Management Committee Meeting and you now have sufficient information to determine this application.

These comments from the Environment Agency indicate that they have no concerns from a groundwater protection perspective. They raise no objection to the proposal.

They originally expressed a view that it is for the Local Planning Authority to consider whether the development is appropriate in his location and accords with The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations (SSAFO) and CIRIA guidance. Officers do not agree with this because the GOV.UK website information on slurry lagoons (available at <https://www.gov.uk/guidance/storing-silage-slurry-and-agricultural-fuel-oil>) makes it clear that this it is the applicant's responsibility to comply with the relevant regulations. It is not planning legislation and not for the local planning authority to ensure compliance with. This website also states "The Environment Agency can also serve a notice at any time requiring you to bring storage up to the current standards if it believes there's a significant risk of pollution" and that persons who control, manage or look after a farm can be prosecuted and fined up to £5000 in a magistrates court could result if the 'rules' are not followed.

In response to further enquiry regarding respective responsibilities, the EA confirmed that it is the applicant's responsibility to comply with the SSAFO regulations, and that they must notify the Environment Agency in writing about their intention to build a new

store, or substantially enlarge or reconstruct an existing store, at least 14 days before construction or reconstruction works commence. They also confirmed that they have a role in the event that pollution does occur and that they can serve notice to stop the use of an unsuitable slurry store until it is improved or relocated.

The requirement to provide 14 days advance notice to the EA prior to the first use of a new slurry lagoon (which must include details of its location and structure) and the provision for the EA to serve notice to require works or precautions to be undertaken etc. are part of the SSAFO Regulations. As the Regulations provide the EA the opportunity to check details of a proposed slurry store prior to its use and to take action if an unsuitable store is used, the LPA cannot seek to control the adequacy of a proposed slurry store e.g. by requesting alterations to it as submitted, or refusing permission on the grounds of inadequacy, as this is a decision for the Environmental Agency to make, and they have not objected to the planning application on these grounds.

For this reason, no detailed officer comment is offered on the technical aspects of the information provided by the applicant (as summarised above) other than to repeat what is said above in terms of the applicant's response being reasonable. The applicant is aware that if circumstances arise during construction which mean that a different size, orientation or construction of lagoon would be needed, this would be a different development proposal to that subject to this application, with a new planning permission likely to be required for it.

The Environment Agency were further been consulted on the map of water sources supplied by the applicant, as this includes a well, close to the site, which had not initially been drawn to the attention of the LPA by objectors. This water source is more than 50 m from the lagoon and the Environment Agency have raised no objections to this relationship.

Whilst the comments and concerns of residents are appreciated, the Local Planning Authority are not responsible for ensuring compliance with all legislation and from a planning perspective, the applicant has submitted a proposal that addresses a pollution requirement of the Environment Agency, has been designed with compliance with the relevant regulations in mind, and has not resulted in any objections from the Environment Agency.

In addition to the above the Council's Environmental Health Officer was reconsulted on the application with the following comments received on the 8th November 2019:

'I have looked at this very detailed additional information provided by the applicant in response to matters raised by residents. Our position from the outset has been that we do not anticipate any human health issues, particularly with respect to water supplies. This is unchanged. The proposals meet the Environment Agency requirements for the construction of these lagoons and as such they are designed to ensure that the groundwater, and hence any private water supplies that extract from it, is protected from possible contamination.'

In light of the above information, the recommendation, justification and acceptability of the application remains as per the original committee report attached and there are

not considered to be any sound planning grounds upon which to refuse the application on the basis of it being for an earth lined lagoon.

ORIGINAL COMMITTEE REPORT

		Committee Date: 1 st 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.