

Application No. 17/01411/FULL

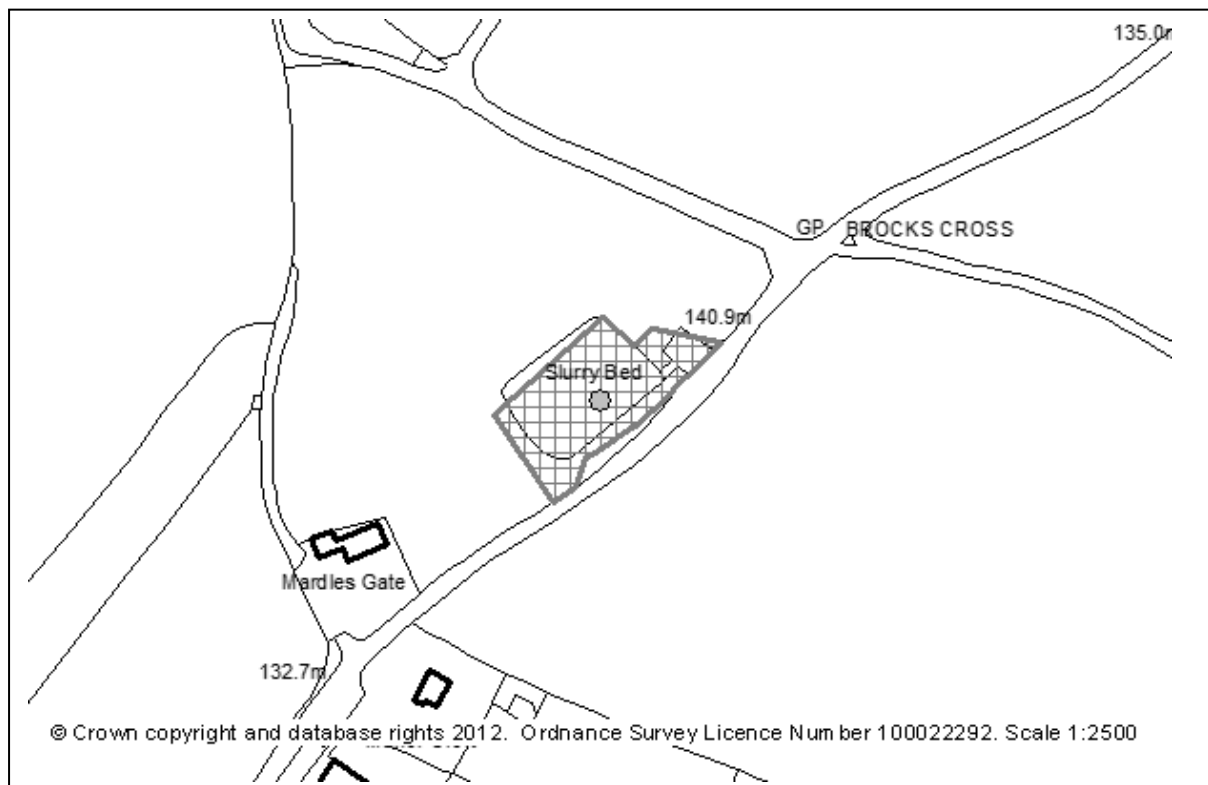
Grid Ref: 276387 : 99761

Applicant: Mr G Pitts

Location: Land at NGR 276429 99746 (Adjacent to Mardles Gate)
Colebrooke
Devon

Proposal: Retention of slurry lagoon

Date Valid: 23rd August 2017



APPLICATION NO: 17/01411/FULL

RECOMMENDATION

Grant permission subject to conditions

PROPOSED DEVELOPMENT & RELEVANT HISTORY

The application is a retrospective submission for the retention of a Slurry Lagoon (5,250 cubic square metre capacity) with an earth bank around it up to approximately 1.5 metres to store dirty water arising from the dairy unit at Brocks Farm. In addition a formal access (previously standard 5bar low level farm gate) has been provided. The development was carried out in Summer 2016. The site was first visited by an enforcement officer on the 14th June 2016.

This application was validated on 23rd August, following consideration of LPA ref: 17/00034/FULL at the planning committee meeting on the 12th July (committee report attached as appendix A) which was refused for the following reason.

1. The slurry lagoon and earth bank surrounding, by reason of its scale and siting in close proximity to the neighbouring properties at Mardles Gate and Manor Croft is considered to adversely affect the residential amenity and the living conditions of these neighbouring occupants by way of odour nuisance, air quality impact and the creation of an un-neighbourly impact, contrary to Policies DM2, DM7 and DM22 of Mid Devon Local Plan Part 3 (Development Management Policies) and guidance in the National Planning Policy Framework.

This current application submission has sought to address the reason by way of an odour management plan confirming that the lagoon will be fitted with a floating slurry tank cover and setting out a specific process for the filling of the lagoon of it by pipeline only and emptying via an outlet pipe utilising an umbilical cord methodology.

APPLICANT'S SUPPORTING INFORMATION

In addition to submitting the Odour Management Plan the applicant has also submitted an odour impact assessment, incorporating revisions received on 29/01/2018, and an Operational Management Plan. For the avoidance of doubt the applicant through the documentation is proposing as follows.

DELIVERY OF MATERIAL. Material will be delivered into the lagoon via a 4" underground pipe which is to be installed if retrospective planning consent is granted. Material collected in a holding tank close to the dairy unit will be pumped via the pipe into the lagoon and discharged below the level of the floating cover.

In addition the applicant has submitted a plan showing the route of the pipe run.

EXTRACTION OF MATERIAL. Extraction of the material will take place via a separate outlet pipe that will operate by gravity and be connected to an umbilical cord that will be towed behind a tractor when spreading takes place across the farmland.

FITTING OF THE COVER. A condition can be applied to the grant of planning consent requiring that the cover to the lagoon should be fitted within six calendar months of the grant of planning consent.

DEVELOPMENT PLAN POLICIES

Mid Devon Core Strategy (Local Plan 1)

COR2 - Local Distinctiveness

COR18 - Countryside

Mid Devon Local Plan Part 3 (Development Management Policies)

DM1 – Presumption in favour of sustainable development

DM22 - Agricultural development

DM30 - Other protected sites

DM7 - Pollution

DM2 - High quality design

CONSULTATIONS

COLEBROOKE PARISH COUNCIL - 27th November 2017

Colebrooke Parish Council met on the 21st November and resolved that the Council was neutral in respect of the application but confirmed that the Council wanted all the conditions that they had set down in relation to the first application to be met. In addition the Council asked for two additional conditions: 1. There should be a through bund supply pipe to prevent the crust being broken 2. There should be a permanent discharge suction pipe that does not break the crust. They further requested that all this action should be taken within 2 months

COLEBROOKE PARISH COUNCIL - 5th March 2018 - Colebrooke Parish Council met on the 27th February and resolved to object to this application on the grounds of 1. Odour 2. Impact on the Community 3 Concern about capacity

The Council wish to send representatives to the Planning Committee when this application is considered when they would ask for the opportunity to explain their concerns in full

NATURAL ENGLAND - 13th September 2017 - The advice provided in our previous response applies equally to this resubmission although we made no objection to the original proposal. No objections raised

ENVIRONMENTAL HEALTH – 14th September 2017 (See also comments further comments set out below).

Contaminated land - No objection

Air quality - No objection

Environmental permitting - N/a

Drainage - No objection

Noise and other nuisances - I am not satisfied that the proposed mitigation measures will be sufficient to mitigate against possible odour emissions from the lagoon due to the close proximity of residential dwellings. Therefore, further information is required on the odour emissions from the site need to be assessed for potential impact on these dwellings by a competent person.

An Odour Impact Assessment is required in order to identify the following:

All potential sources of odour and their estimated rates of emission from the lagoon;

The potential for fugitive emissions of odour together with the means to control these emissions;
The location of sensitive receptors;
A wind rose for the site;
Potential pathways to sensitive receptors;
A description of the potential impacts including evidence provided by dispersion models;
Details of any necessary odour abatement systems or other mitigation measures with justifications for the measures being proposed;

And

Details of an Odour Management Plan (OMP) with contingency arrangements for responding to any unforeseen or unusual odour emission episodes.

Without this information I would recommend that this application is refused.

Further comments on 31st October 2017 - The assessment would seem to be a robust assessment and taking the report into consideration I would change my recommendation to:

I recommend approve with conditions:

The applicant must install and maintain in good order a full plastic sealed floating cover (or similar) in order to reduce the likelihood of any odour emissions from the lagoon.

Further comments received on the 26th February 2018 following a review of the Odour Impact Assessment (Revised Details)

In general terms odour levels of $>5\text{ouE}/\text{m}^3$ may constitute an annoyance or nuisance whereas odour levels $<3\text{ouE}/\text{m}^3$ are less likely to constitute a nuisance or to be detrimental to the local amenity (Guidance on the Assessment of Odour for Planning 2014) however, this does not mean that the impact of odour emissions from an approved site cannot lead to nuisance complaints.

The H4 Odour Management guidance document (used by the Environment Agency to deal with odour from permitted sites) set odour benchmarks based on the 98th percentile of hourly mean concentrations of odour modelled over a year at the site/installation boundary. The benchmarks are as follows:

- $1.5\text{ouE}/\text{m}^3$ for most offensive odours.
- $3.0\text{ouE}/\text{m}^3$ for moderately offensive odours.
- $6.0\text{ouE}/\text{m}^3$ for less offensive odours.

Odours from agricultural activities are placed in the moderately offensive category. Therefore, taking the above into consideration the benchmark for moderately offensive odours would be under a 98th percentile hourly mean of $3.0\text{ouE}/\text{m}^3$ over a one year period.

The Brocks Cross Lagoon Odour Impact Assessment (Jan 2018) indicates that with the lagoon fully covered the odour impact on nearby residential dwellings will be under the C98, 1-hour $3\text{ouE}/\text{m}^3$ limit and therefore, the odour impact on any nearby residential dwellings will not be significant.

Having reviewed the Odour Impact Assessment the assessment appears to be a robust assessment and taking this into consideration I recommend the approval of the application subject to the following condition:

A full Odour Management Plan (OMP) is required in order to demonstrate that odour emissions will be adequately controlled to prevent a significant loss of amenity to neighbouring sensitive land users. Use of the proposed site shall not commence until the OMP has been agreed in writing with the Local Planning Authority. The installation and maintenance requirements of the cover (in accordance with the manufactures recommendations) will form part of the OMP along with rainwater removal from the cover.

Reason: To ensure that the proposed development does not prejudice the amenities of the locality by reason of odour nuisance.

Further Comments received on the 23rd March 2018 following a review of the Odour Management Plan.

I am happy with the new OMP but I would recommend that the cover is installed within 3 months in order to protect the amenity areas of local residential dwellings.

Highway Authority - 11th September 2017 – No specific comments were made on this application but the section below set out the comments from the Highway Authority on the earlier application (17/00034/FULL).

Comment Date: Fri 26 May 2017 - I have visited the site and the Highway Authority has no objections in principle, however the current access to the field is substandard in terms of construction, visibility and drainage.

Therefore the application should be conditional on the provision of visibility splays measuring 2.4 m back along the centre line of the access and extending to a point 25m either side of the access with no obstruction greater than 600mm. The access should be constructed in a bound material (tarmac or concrete) for the first 6.00m back from the edge of the carriageway, and should be drained so as to prevent surface water slurry and detritus entering the public highway. In addition to which the gates should be hung to open inwards. Therefore the following conditions should be imposed

Recommendation:

THE HEAD OF PLANNING, TRANSPORTATION AND ENVIRONMENT, ON BEHALF OF DEVON COUNTY COUNCIL, AS LOCAL HIGHWAY AUTHORITY, RECOMMENDS THAT THE FOLLOWING CONDITIONS SHALL BE INCORPORATED IN ANY GRANT OF PERMISSION

1. Visibility splays shall be provided, laid out and maintained for that purpose at the site access where the visibility splays provide intervisibility between any points on the X and Y axes at a height of 0.60 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.40 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 25.00 metres in both directions.

REASON: To provide adequate visibility from and of emerging vehicles.

2. In accordance with details that shall previously have been submitted to, and approved by, the Local Planning Authority, provision shall be made within the site for the disposal of surface water so that none drains on to any County Highway

REASON: In the interest of public safety and to prevent damage to the highway

3. The site access road shall be hardened, surfaced, drained and maintained thereafter to the satisfaction of the Local Planning Authority for a distance of not less than 6.00 metres back from its junction with the public highway and any gates should be hung to open inwards

REASON: To prevent mud and other debris being carried onto the public highway

REPRESENTATIONS

4 objections from local stakeholders have been received whilst the application has been assessed.

1. The current occupation of the neighbouring residential property Mardles Gate is confirmed as lawful.
2. The Lagoon is considered to be too close to the neighbouring residential dwellings causing an intolerable odour problem for residents.
3. The accuracy of the Odour Impact Assessment as submitted is questionable and not considered fit for purpose. Detailed comments as below:

I am concerned that the depiction of this feature in the supporting documentation, the aerial photography and site location plan, does not appear to be an accurate representation of the object that exists on the ground. The existing feature appears to be situated further to the southwest than shown, possibly by as much as 20m, and, consequently, closer to the nearby properties. Much of its supporting documentation, particularly the Odour Impact Assessment, relates to a seemingly erroneous location and would therefore be unfit for purpose.

I fail to see how, given the sensitivity of this case, an application could be made and considered without a true and metrically accurate depiction of this feature in relation to its immediate environs and in particular the built environment.

MATERIAL CONSIDERATIONS AND OBSERVATIONS

The officer report for planning application reference 17/00034/FULL is attached this report at appendix A. The application was refused and as stated in the conclusion section of the report, it was recommended that further investigations be undertaken with the applicant to identify an alternative site to locate the Slurry Pitt. However, prior to commencing an evaluation of alternative sites across the holding the applicant submitted this current application for consideration which is now required to be determined.

This next section of this report provides an assessment of the extent to which this application satisfactorily addresses the reason for refusal of the earlier application.

The implications of the development on living condition of the neighbours properties.

There are two residential properties not connected to the farming enterprise in close proximity to the lagoon, the closest being Mardles Gate, the garden of which is less than 40.0 metres from the boundary of the site. The other property is Manor Croft. The garden areas to these properties have a clear relationship to the lagoon.

The lagoon with its banks forms a dominant element in views from these properties, although the distance is sufficient not to create an oppressive outlook within the nearby houses or their gardens and there are no significant harmful effects on outlook from the properties.

It is accepted that the unauthorised slurry lagoon results in detriment to the amenities of the area by virtue of odour impacts in particular arising from when it is being filled and emptied. Although when the earlier application was being considered the applicant offered to seek to redress the odour issues by arranging to fit an airtight membrane to the Lagoon no details of the installation or any other odour reduction methods were submitted for consideration. Furthermore given that there was no evidence that a cover, and/or other odour reduction methods, would be adequate to offset the inherent issue of closeness to residential occupiers in terms of odours arising, the application was refused.

With this current application the applicant has submitted an odour impact assessment to

provide an evidence base to support the principles set out in the odour management plan as set out above.

The scope of the impact assessment has used a dispersion modelling process to allow comparison between impacts associated with the operation of the facility under different emission scenarios (covered and uncovered). Emissions data used in the scenarios is derived from published library data for cattle slurry.

Although the robustness of the evidence base has been challenged, the applicant's consultant has provided clarification points to satisfy the Local Authorities Environmental Health officer with regards to the conclusions of the assessment. A summary of the assessment as now agreed is set out below.

1. The result of this quantitative assessment is that it can be concluded that the operation of an uncovered lagoon is likely to lead to unacceptable odour impacts at residences. The results also indicate that the model is over predicting the impact as a result of the high emission rates applied and the assumption that the lagoon is full of this odorous material for the entire year.
2. The operation of a (fully) covered lagoon is likely to be acceptable based on the results of the dispersion modelling requested by the Council.

Therefore subject to controlling the future use of the Slurry Pitt lagoon in terms of filling it and emptying it, the provision of a fitted cover is considered to redress the odour impacts that have been an ongoing concern since the Lagoon was formed, and was the basis for refusing the earlier application. Whilst the applicant has requested up to 6 months to install the necessary infrastructure, a shorter time period of 3 months is considered more appropriate to ensure the impact on the neighbouring occupiers is redressed in a reasonable timescale. This also reflects the time period for which the matter has been going through the assessment and resolution stages.

Access / Movement Issues

As stated above the applicant has formed a new access in the position of a former 5 bar gate access. Clarification is being sought as to the nature of the spreading methodology, and if vehicular access to the lagoon site is still required to facilitate spreading the conditions as recommended by the Highway Authority when consulted on application LPA ref: 17/00034/FULL and as set out above in this report will be recommended to control the ongoing use of the facility. An update will be provided to members on this matter before the meeting on the 18th April.

Planning Balance, Conclusion and the Way Forward

It is recognised that the lagoon could improve the efficiency of the farm business and foster its development, although it is noted the applicant has not chosen to provide any evidence to clarify why the application site was identified across the holding, and whether any other sites had been considered. Notwithstanding the absence of this information (and therefore the Council cannot be satisfied that the application scheme is the only location to accommodate the lagoon) a decision is required to be made on this current application.

The Council have assessed the impact of the development as it has been constructed and have concluded that it adversely affects the living conditions of neighbouring occupiers in it's

current state and form. When the earlier application was being considered there was not a robust evidence base to clarify that the odour impacts could be satisfactorily addressed and the scope of measures required to achieve an acceptable resolution. This evidence base, as originally submitted has been subject to a critical review and the LPA's Environmental Health officer has confirmed that that the odour impacts could be satisfactory mitigated by the measures outlined in the odour management plan (OMP) as summarised above. Conditions are drafted to control the ongoing use of the currently unauthorised development and requiring the terms of OMP to be operational within a three month time frame.

With these controls in place if the land owner were to breach the terms of conditions in relation to manner in which the lagoon is filled and/or emptied the Local Planning Authority would be in a position to enforce the terms of the development by serving a breach condition notice and a stop notice to cease it operational use in an unlawful manner.

On this basis, and subject to the conditions as recommended, it is considered that the application scheme is on balance compliant with the following development plan policies: COR2 and COR18 of the Mid Devon Core Strategy (Local Plan Part 1), DM1 and DM22 and Government advice in the National Planning Policy Framework

CONDITIONS

1. The date of the grant of planning permission is considered to be 23rd August 2017 which is the date that the application was registered.
2. The approved plans are listed in the schedule on the decision notice. Notwithstanding the approved plans, within 3 months of the date of this decision notice the lagoon cover as set out in the Operational Management Plan hereby submitted and approved shall be installed at the site and retained for the lifetime of the use of the lagoon and managed as such thereafter in accordance with the terms as set out in the agreed Operational Management Plan.
3. Once the lagoon cover has been installed as required by condition 2 material shall only be delivered to the site in accordance with the terms as set out in the agreed Operational Management Plan.
4. Once the lagoon cover has been installed as required by condition 2 material shall only removed from the site in accordance with the terms as set out in the agreed Operational Management Plan

REASONS FOR CONDITIONS

1. To reflect the retrospective nature of the application submission and in accordance with the provisions of the Town and Country Planning Acts.
2. For the avoidance of doubt, in the interests of proper planning and to limit the adverse impacts of the ongoing use of the lagoon on the living conditions of local residents in accordance with Policy DM22 of the Local Plan Part 3 (Development Management Policies).
3. To limit the adverse impacts of the ongoing use of the lagoon on the living conditions of local residents in accordance with Policy DM22 of the Local Plan Part 3 (Development Management Policies)

4. To limit the adverse impacts of the ongoing use of the lagoon on the living conditions of local residents in accordance with Policy DM22 of the Local Plan Part 3 (Development Management Policies).

REASON FOR/ APPROVAL OF PERMISSION/GRANT OF CONSENT

It is recognised that the Lagoon could improve the efficiency of the farm business and foster its development, however the critical influencing factor in the decision making process of this retrospective application is the close proximity of it to neighbouring properties. This application is a resubmission of an earlier application (LPA case ref: 17/00034/FULL). This current application has been submitted with a robust evidence base to clarify that the odour impacts could be satisfactorily addressed and the scope of measures required to achieve an acceptable resolution. The Council have assessed the impact of the ongoing use of the lagoon which was constructed without the benefit of planning approval, and subject to a number of conditions to ensure the ongoing compliance with the agreed Operational Management Plan, this current application is considered on balance to be acceptable. On this basis, and subject to the conditions as recommended, it is considered that the application scheme is on balance compliant with the following development plan Policies: COR2 and COR18 of the Mid Devon Core Strategy (Local Plan Part 1), DM1 and DM22 of the Local Plan Part 3 (Development Management Policies) and Government advice in the National Planning Policy Framework.

The Human Rights Act 1998 came into force on 2nd October 2000. It requires all public authorities to act in a way which is compatible with the European Convention on Human Rights. This report has been prepared in light of the Council's obligations under the Act with regard to decisions to be informed by the principles of fair balance and non-discrimination.