

Briefing on Cleave Farm and Crossparks, Templeton



Scrutiny Committee March 2017

1.0 Introduction

- 1.1 This is a briefing requested by the Scrutiny Committee following a detailed public question time item raised by Miss S. Coffin (Chair of Templeton Parish Council) at the previous committee meeting on 13 February 2017 as minuted.
- 1.2 The briefing is necessarily detailed in response to a range of points and assertions raised by Miss Coffin regarding investigations made by the Environmental Health team (Public Health Services) at Templeton. Specifically, in respect of potential nuisances and impact upon a private drinking water supply arising from agricultural, farm storage and spreading activities at Cleave Farm and Crossparks.
- 1.3 Cleave Farm has a number of storage facilities for farm slurry including a mobile nursery tank. Crossparks has an open slurry pit and is located approximately 1km to the north-west with an underground pipeline connection between the two locations. A plan showing these locations and the nearest residential dwellings is attached.
- 1.4 We understand the connected Cleave and Crossparks holdings were previously operated by Reed Farms Ltd and a Reed family partnership both of which are now in administration. However, Mr Winston Reed continues to operate the facilities under the permission of the Administrator (Moorfields Corporate Recovery).
- 1.5 The open slurry pit at Crossparks is used as a final storage point for subsequent on-farm land spreading of slurry and/or digestate for apparent agricultural benefit. Depending on the spreading location and other factors, the material can be either be pumped up from Cleave Farm via the pipeline or introduced via the nursery tank or various other tankers directly into the pit. There are onward underground pipe connections from the tank into adjacent fields to facilitate spreading and additionally material can be pumped out by tractor units and spread over a wider area.
- 1.6 Land used for spreading around Cleave and Crossparks was previously predominately located within an Environment Agency enforced Nitrate Protection Zone (NPZ) which placed legal controls on the management of the spreading. Since 1 January 2017, the Government (Defra) have redrawn a number of NPZ boundaries and the land in question is now outside of an NPZ area.
- 1.7 There are a number of potential agencies involved in the potential regulation of activities on-going at Cleave Farm and Crossparks. These were outlined to the committee in a joint Environmental Health and Planning report on Anaerobic Digesters in November 2015. In essence this is Environmental Health and Planning

internally. Externally the Environment Agency is responsible for land-spreading, pollution and waste movement/storage matters including any permitting requirements. Devon County Council has an interest as the waste planning authority and as the highways authority. Public Health England has no direct regulatory powers but as an arm of the Department of Health provide expert public health advice to the public and to the NHS/Local Government.

2.0 Role of Environmental Health

Statutory Nuisance

- 2.1 As correctly stated by Miss Coffin, Environmental Health are the enforcing authority for Statutory Nuisance legislation under the Environmental Protection Act (EPA) 1990. These are essentially reactive powers to investigate complaints of odour, noise, dust and other nuisances. Where a nuisance is proven there are related powers to serve abatement notices requiring action to cease the nuisance and ultimately prosecute in the event of non-compliance.
- 2.2 In order for a statutory nuisance to exist, the nuisance in question must be unlawful (i.e. have no legal authority to occur) and be prejudicial to health or result in an unreasonable interference in another person's use of their land or reduction in amenity or environmental quality. The context requires there to be something of a public health element in the consequences of the nuisance.
- 2.3 In investigating any nuisance that may be causing interference or loss of amenity, the Environmental Health team will be required to also assess the likely impact of the nuisance in terms of its frequency and persistency. Overall, there will also need to be a consideration of any existing 'best practicable means' in place to mitigate any impacts and any other factors such as any on-going or previous malicious or vexatious complaints made between the parties involved (where we are made aware).
- 2.4 The law does not make any separate definition of 'rural' or 'urban' nuisance. These were terms referenced by Miss Coffin at the last meeting, however in law a nuisance is a nuisance irrespective of the location. The combination of factors influencing whether a nuisance exists are very much specific to each individual case.
- 2.5 While the burden of proof is based on 'balance of probability' rather than 'beyond reasonable doubt' this is in part because there is no legal threshold or limit of dust, noise or odour that will give rise to a nuisance in every location and circumstance. Nonetheless, the EPA 1990 is still criminal legislation and subject to the scrutiny of a criminal court in respect of any appeal regarding the service of an abatement notice or subsequent prosecutions for alleged breaches of a notice.
- 2.6 Local authorities have a duty under the Act to inspect their areas from time to time to detect statutory nuisances and to take such steps as are *reasonably* practicable to investigate any complaints of statutory nuisance made by persons living within their area. However they do so, where they find that a statutory nuisance exists or is likely to occur or recur, they must take some action to abate that nuisance.

- 2.7 The law and adopted enforcement policy for Public Health Services also requires us to be reasonable and give persons the opportunity to cease or manage activities giving rise to a possible nuisance. Interventions at this level can be effective in dealing with specific activities and operations without the need to undertake any further, formal action.
- 2.8 In summary therefore, whilst the law can seem quite straightforward in terms of statutory nuisance the reality is often complex. In any given situation there may be a number of sometimes conflicting factors requiring impartial professional investigation. Ultimately it may not be possible to determine a nuisance on the balance of probability and therefore we are unable to undertake any formal action to require the activity to cease or reduce however frustrating this may be to the persons affected.
- 2.9 Furthermore, it is worth highlighting that whilst statutory nuisance powers are reactive, Environmental Health are not an emergency service and are required to operate largely within normal weekday working hours. The Council does not operate an out-of-hours environmental health service and this was withdrawn under the approval of members some years previously based on low uptake levels of the service and best use of resources. Out-of-hours investigations and evidence gathering can however continue through use of diary sheets, witness statements and monitoring equipment for example and limited targeted inspections where possible.

Private Water Supplies

- 2.10 The Private Water Supplies (England) Regulations 2016 are the current statutory provisions regulating private drinking water supplies i.e. those supplies that are not provided by a public utility company such as South West Water. There are over 1,000 supplies of all sizes in the Mid Devon area.
- 2.11 The regulations require the Environmental Health team to complete sampling for wholesomeness and undertake a risk assessment of all private water supplies (PWS), except for supplies to single non-commercial domestic dwellings, every five years. Risk assessments involve looking at the whole private water supply including the source, any storage tanks, any treatment systems and the premises using the supply.
- 2.12 We also obliged to provide a service to sample single domestic water supplies if requested by the supply owner and the same standards of wholesomeness apply.
- 2.13 There are procedures that local authorities must follow if any private water supply is determined as being unwholesome under the regulations. This includes a requirement to investigate the cause of any failures, inform users of the supply if it poses a potential danger to human health and giving advice to users to minimise any such potential dangers. Enforcement powers are available if needed and by law are directed to the owners and/or those in control of the supply to ensure the water is safe to drink, irrespective of the cause of the failure.

- 2.14 Therefore, the environmental health team have a statutory interest in any matters which could impact upon the wholesomeness of any private water supply borehole or spring in our area.

3.0 Environmental Health investigations

Background and performance

- 3.1 In respect of Cleave Farm and Crossparks there is a detailed and expansive history of investigation work by the Environmental Health team over a number of years. Consequently it is only possible to provide a summary herein. Nonetheless, it is hoped this summary provides assurances to the committee of our on-going commitment and effort to resolve matters where we have the power to intervene. At all times we have approached the situation in Templeton with due impartiality and there is no basis (or indeed logic) for the team to adopt any policy of appeasement, to rebuff or frustrate residents or follow a 'path of least resistance' as very much erroneously stated by Miss Coffin to the committee.
- 3.2 As the timeline below indicates, officers have undertaken numerous site visits and undertaken monitoring. They have also provided means to gather any relevant evidence and generally extended a significant effort in attempting to establish nuisance and investigate all other matters within our concern. The same officers have also worked closely with local members, all the relevant other agencies involved (as outlined above) and met with residents personally and in public and private meetings. We have done so in a timely manner within the performance standards set out for the service.
- 3.3 In reference to performance, Miss Coffin disputes the figures quoted in the report at the same meeting from the Cabinet Member for Community Well Being (Cllr Colin Slade). The report paragraph quoted by Miss Coffin is incorrect however, it is assumed that this is a reference to paragraph 10 of the report. The 95% target quoted here is an overall initial response time of 5-days for all service requests across Public Health Services (Licensing, Environmental Health and Private Sector Housing) and that has been met during 2016, despite resource pressures, and is documented on the service case management system.
- 3.4 The Environmental Health team have also been formal consultees on planning applications for new anaerobic digester plants including proposals for Menchine Farm (Nomansland) and Cross Moor Farm (Crossparks). This resulted in the team undertaking noise monitoring and assessments to British Standard (BS) 4142 involving significant additional site monitoring and interpretation/reporting time.

Investigation history

- 3.5 Records indicate Environment Health first had cause to investigate nuisance in the area of Cleave Farm in 2005. This was in respect of complaints of vehicle mud and noise. The activities identified were sufficiently transient and other matters outside of our jurisdiction that no formal action was required.

- 3.6 Between 2005 – 2011 we received a small number of additional nuisance complaints, largely once again in connection with vehicle noise. These were actioned and resolved in a similar manner to the original complaint. There was also one complaint in connection with slurry spreading near Crossparks which was passed to the Environment Agency as the matters concerned fell more clearly within their remit.
- 3.7 In late 2012 and 2013 matters escalated in respect of complaints of noise nuisance coming from slurry pumps at Cleave Farm. This resulted in a number of site visits, noise monitoring and correspondence with the site operator to seek a resolution. It cumulated in service of a formal Noise Abatement Notice in late 2013 under EPA1990. This notice was initially appealed however following dialogue between the operator and the Council this appeal was withdrawn and the notice fully complied with and the nuisance abated.
- 3.8 During 2014 there was an increase in reports of issues surrounding Crossparks, focussing on vehicle movements coming in/out, impacts on the public highway, slurry deliveries and spreading practices. Again, this resulted in a number of site visits by the Environmental Health team; however no nuisance was formally identified. We did however request in writing to the operator that the timing of spreading was altered so as to reduce any amenity impacts at weekends.
- 3.9 Also during 2014, we were required to become involved a neighbourhood dispute between the owners of Palm Springs (property closest to Crossparks) and the site operator regarding the positioning of new drinking water boreholes (private water supply) on the boundary of land used for spreading. Whilst we had some concerns over the location of the boreholes and potential impact, a risk assessment indicated the boreholes to be deep and adequately engineered providing good protection from surface run-off contamination or shallow leachate. We advised however that a 50m 'cordon sanitaire' be placed around the boreholes within which no spreading should occur in accordance with best practice and other provisions enforceable by the Environment Agency.
- 3.10 During 2015, noise (and to a lesser extent odour) complaints were raised in connection with tanker and tractor pumping in and out of the Crossparks pit. The team responded with an increasing number of site visits to try and witness possible nuisance and get an understanding of the operations being carried out. This resulted in a determination that a sporadic noise impact in particular was possible which could be adequately mitigated by moving operations to the opposite side of the pit where the adjacent farm building offered screening. Following notification in writing that we were prepared to serve notice, the operations were moved as desired and have substantially been carried out in this manner since.
- 3.11 A further complaint of noise nuisance coming from Cleave Farm was also received in 2015. Again, following prompt investigation a new noise nuisance was identified and on this occasion was managed and abated under the terms of the existing Noise Abatement Notice served in 2013.
- 3.12 A range of nuisance complaints, unfortunately following no clear pattern, continued to be received during 2016, ranging for poor spreading practices, noise and odour

associated with the Crossparks pit and further concerns in respect of impact on boreholes at Palm Springs. An increasing number of site visits were conducted to witness and assess nuisance however no statutory nuisances were identified or considered likely. One exception was the spreading of dusty chicken manure which was witnessed by an officer from Environmental Health and immediately determined as a nuisance – the officer intervened immediately with the contractor involved; the activity was ceased immediately without requirement to serve an Abatement Notice.

- 3.13 Also during 2016, concerns were raised by residents of the potential health impact of mixed materials being stored at Crossparks/spread locally. Consequently, Environmental Health sought formal advice from Public Health England (PHE) who provided reassurances, which were passed on to residents.
- 3.14 During last year we also offered noise monitoring equipment to local residents on a number of occasions without take-up. This included placing equipment on standby for a number of weeks on one occasion, despite demands on that equipment elsewhere in Mid Devon. In late December we did manage to place equipment in Palm Springs on the agreement of the occupants for a two-week period over the Christmas/New Year holiday as an immediate response to concerns over a possible nuisance. No substantial problems were subsequently found to have occurred and no noise nuisance established upon analysis of the recordings.
- 3.15 In respect of concerns raised most recently regarding impact on the same private drinking water supply, officers undertook a fresh risk assessment and found no change in the security of the supply from the impacts of spreading. Officers also offered to undertake reassurance sampling/testing despite the supply not actually being used for drinking (mains water is also available and being consumed). The offer of sampling was not taken, however an officer did arrange a separate meeting with the site operator and his farm manager, followed up in writing, to reiterate the 50m clearance zone (recommendation).

Current matters and position

- 3.16 Into 2017, officers have continued to make substantial numbers of visits including some out-of-hours. Largely these have resulted in no significant odour, dust or noise being found and no adverse symptoms being experienced by officers. However, one activity has given rise to concern in respect of potential odour arising from the mixing of material in the pit prior to spreading. This activity is occurring very infrequently and has only been directly witnessed by an officer on one occasion. Nonetheless, we have written to the site operator advising of a potential nuisance and since that time no mixing has been carried out. We have requested that the site operator meet with officers to carry out a joint assessment of the activity. An unannounced site visit on 22 February found no evidence of the mixing equipment at Crossparks or Cleave Farm.
- 3.17 In response to escalating complaints of ill-health from residents in recent weeks, arising in response to potential gas emissions including Hydrogen sulphide from the Crossparks pit, we immediately requested updated formal advice from PHE. This advice has been received and disseminated widely and concludes that nuisance

issues are likely to arise long before matters become prejudicial to health. At all times we have encouraged residents to speak to their GP or seek other medical help if they are concerned.

- 3.18 Reference is made in the statement by Miss Coffin to concerns being logged with emergency services. We are aware that a specialist hazardous materials officer from the Fire Service did attend Palm Springs and Crossparks in January this year. We held discussions with the fire officer immediately following this visit and understand they made a precautionary pre-arranged (i.e. non-blue light) visit in response to conflicting or uncertain information regarding gas at the property. The officer commented with residents that odours will be detected differently by individuals however was able to use specialist sensitive gas monitoring equipment to take measurements. The fire officer was satisfied that he did not detect any Hydrogen sulphide either inside or outside the property and did not find any immediate risk to health. The advice he provided, which we have also advocated, is that residents continue to work with the Council to identify nuisances and that nothing has been identified that suggested immediate serious danger requiring further the invention from the Fire Service.
- 3.19 The Environmental Health team are nonetheless in the process of obtaining and reviewing witness statements from residents who have expressed ill-health symptoms in connection with the above.
- 3.20 Officers have also continued to exchange regular updates and share information with the Environment Agency on matters of mutual concern. In February, as a result of shared information and concerns over possible mixing of other materials in the Crossparks pit (beyond slurry and digestate), a joint visit was made and formal samples were taken by the Agency and the results are pending at the time of writing.

Context and summary

- 3.21 Unless we have specifically required the site operator or a colleague/contractor etc. to be present at a site-meeting or inspection, we can unequivocally confirm that officers have *not* pre-announced any site visits with the parties being complained against, contrary to the statement made.
- 3.22 In terms of inspections or monitoring visits that we have formally logged on our records (there have been other ad-hoc visits and passing opportunities to make nuisance assessments etc.) the number undertaken by officers in the Environmental Health team are:
- 2013 – 6 visits
 - 2014 – 8 visits
 - 2015 – 10 visits
 - 2016 – 21 visits
 - 2017 – 12 visits (to date, - first seven weeks only)
- 3.23 The escalating visit numbers summarised above are in addition to significant (and on-going) time being taken up on phone calls, emails, reviewing results,

undertaking research/reviewing authoritative publications and updating members and residents etc. Taking a very conservative estimate of Environmental Health/Service Manager officer time used in the last two-years alone plus mileage costs it is calculated that more than £10k has been spent investigating matters set out herein. This excludes any resources spent in other service areas such as planning or by the Chief Executive/Leadership Team.

- 3.24 To put some context on the above, there are a maximum of 2.5 FTE staff resources available for pollution work within the Environmental Health team at any one time. Each year, these staff are responsible for dealing with over 400 service requests ranging from statutory nuisances, sanitary failures, drainage, filthy premises, pollution incidents/spillages and pest infestations. This is in addition to undertaking a number of on-going proactive statutory commitments e.g. inspecting permitted sites, air quality management areas and responding to licensing and planning consultations etc.
- 3.25 The response to issues at Cleave Farm and Crossparks cannot be considered insignificant and have in fact been heavily weighted in comparison to resources being allocated elsewhere. The terms of our legal obligations were set out above and require us to take steps that are *reasonably practicable*, a measure we have clearly met, and arguably exceeded, in respect of this investigation. The reality is that it is becoming increasingly difficult to sustain an above-and-beyond response against the needs of other service priorities and equally important complex cases elsewhere in the district. It is agreed that we must treat the residents of Templeton equitably, but by the same token we must do the same with all residents district-wide.

4.0 Other matters

Crossparks pit cover

- 4.1 As described above, the Crossparks pit is an open facility without a cover. Whilst it is compliant with agricultural storage requirements there would be benefit gained from having a floating cover. This would reduce residual odours and other gaseous emissions from material in-situ when the pit is not being emptied and filled. To this end the Environmental Health team advised the site operator in December 2016 of a Defra/Natural England grant scheme for funding covers. We understand from the site operator that he took advantage of this and an application has been successfully processed. We're awaiting confirmation of when the cover will be in place.

Out-of-hours operators

- 4.2 As members will be aware, for some time the Council has operated a call centre under contract with Taunton Deane Borough Council for callers contacting the Council out-of-hours on our central number. In her statement, Miss Coffin indicates that operators at Taunton Deane have refused to take complaints over the phone.
- 4.3 The Taunton Deane service was set-up principally to assist the Council in the management of urgent housing service repairs enabling standby-officers to arrange

for urgent works and for managing incidents triggering the emergency plan. It was not set up to provide a log and response service for environmental health matters, especially given there is no out-of-hours service within that team. Consequently, for a wide range of non-urgent calls Taunton Deane would have correctly advised callers to report issues directly through the Mid Devon website or contact us during working hours and this will have been consistent practice for some time.

- 4.4 In response to regular calls received more recently arising from activities at Crossparks (and to a lesser extent at Cleave Farm), we have requested that Taunton Deane log calls relating to environmental health and forward these through so they can be picked up as efficiently as possible the next working day and to avoid customers duplicating contact with the Council. This change came in effect in October 2016 and we have received information by this means since where calls have been made.
- 4.5. It is possible that expectations have been raised with residents as a result of making this change with Taunton Deane, however operators will have made it clear they are logging the call only.

Non-Environmental Health issues

- 4.6 The statement from Miss Coffin makes a number of other points that are not environmental health matters, particularly in respect of planning issues. The two internal services continue to work closely together. The committee requested a service manager response in respect of environmental health matters which are the main thrust of the statement from Miss Coffin. Input from the Planning Service to the points raised is below.
- 4.7 The Local Planning Authority (LPA) have been informed of concerns regarding activities at Cleave Farm and Cross Parks, Templeton. The LPA have liaised with the Environment Agency, Devon County Council and Environmental Health regarding the concerns that have been raised.
- 4.8 Neither Devon County Council or the Environment Agency have informed the Local Planning Authority that Cleave Farm is being used as a waste transfer station as the digestate being brought onto the farm is not considered to be waste. It is understood that the Environment Agency are currently investigating whether whey has been disposed of at Crossparks, however, the LPA have no further information on this matter at this time. The slurry and digestate mix being removed from Cross Parks is also not considered to be waste, as long as the slurry/digestate mix is spread on land for agricultural benefit. As the known products being brought onto and removed from the premises are not considered to be waste, then the LPA have concluded that neither Cleave Farm nor Crossparks can be stated to have experienced a change of use to a waste transfer station. A transfer station would be a building or processing site for the deposition of waste. If Cleave Farm and Crossparks are not being used as a transfer station then there has been no material change in use and planning permission for current activities at the premises is not required.

- 4.9 It is the LPA's understanding that as neither the input nor output to and from Cleave Farm and Crossparks are considered to be waste then no waste carrier licence is required for the vehicles bringing the digestate to Cleave Farm. Likewise when the slurry/digestate mixture is removed from Crossparks no licence is required. There are therefore no official records with regards to what vehicles are coming and going from these premises when digestate/slurry is being transported.
- 4.10 The EA have confirmed that Nitrate Vulnerable Zone (NVZ zone) restrictions have very recently been removed from areas of land in and around Templeton as nitrate levels are considered to be low enough to allow further spreading. As a result there is now a larger area of land available for the spreading of digestate/slurry mix in the Templeton area which may explain increased activity at Cleave Farm and Crossparks.4.11 There is a slurry lagoon at Crossparks that was granted planning permission in 1993 under reference 93/00639/FULL. There is a slurry pipeline between Cleave Farm and Crossparks that was not subject to a planning application and was not granted planning permission. However, it has been in situ and use for a number of years and is immune from Planning Enforcement action.

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Area layout

