



Appeal Decision

Site visit made on 5 November 2019

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 20 November 2019

Appeal Ref: APP/Y1138/W/19/3234904

**Land at Mardles Farm, Road from Birchmans Cross to Brocks Cross,
Colebrooke EX17 5DL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr G Pitts against the decision of Mid Devon District Council.
 - The application Ref 19/01048/FULL, dated 19 June 2019, was refused by notice dated 31 July 2019.
 - The application sought planning permission for retention of an agricultural slurry lagoon (1200 sqm) without complying with a condition attached to planning permission Ref 19/00224, dated 3 April 2019.
 - The condition in dispute is No 2 which states that: *"The approved plans are listed in the schedule on the decision notice. Notwithstanding the approved plans, prior to the use of the lagoon, a cover shall be installed over the development in accordance with details which shall have been submitted to and approved by the Local Planning Authority beforehand. Details provided with this application identify a floating cover but final confirmation to the chosen floating cover is required to be submitted and approved."*
 - The reason given for the condition is: *"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 locality in accordance with DM22 of the Mid Devon Local Plan Part 3 (Development Management Policies)."*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission for the retention of an agricultural slurry lagoon was granted by the Local Planning Authority in April 2019, subject to a series of conditions. Condition 2 of that permission states that, 'The approved plans are listed in the schedule on the decision notice. Notwithstanding the approved plans, prior to the use of the lagoon, a cover shall be installed over the development in accordance with details which shall have been submitted to and approved by the Local Planning Authority beforehand. Details provided with this application identify a floating cover but final confirmation to the chosen floating cover is required to be submitted and approved'.
3. The appeal before me seeks to retain the agricultural slurry lagoon without complying with the above condition. It has been put to me by the Appellant that there is no reasonable justification for the imposition of such a condition. The Council maintain that the condition is reasonable and is necessary in order

to protect the living conditions of nearby residents and in order to protect the environment.

4. Accordingly, the main issue in this appeal is whether the disputed condition is necessary and reasonable having regard to the living conditions of local residents and to the protection of the environment.

Reasons

5. The appeal site comprises a slurry lagoon located within open agricultural fields approximately 750 metres southwest and outside of the settlement of Colebrooke. The surrounding land includes agricultural fields bordered by established hedgerows, with areas of woodland close to the site. The evidence before indicates that the nearest residential dwelling is more than 200 metres from the site.
6. Policy COR18 of the Mid Devon Local Development Framework Core Strategy 2026¹ (the Core Strategy) strictly controls development outside of defined settlements, to enhance the character, appearance and biodiversity of the countryside. It states that detailed development control policies will permit agricultural and other appropriate rural uses subject to a number of criteria.
7. Policies DM7 and DM22 of the Mid Devon District Council Local Plan Part 3 Development Management Policies² (the Local Plan), amongst other things, provide that, with regards to odour and air pollution, agricultural development should be sensitively located to limit the adverse effects on the living conditions of local residents and where such development will not have an unacceptable adverse impact on the environment.
8. The appeal concerns whether the planning condition with regards to the installation of a floating cover on the slurry lagoon is reasonable and necessary. In this respect, the evidence before me indicates that the Council considers that the condition is necessary and reasonable following consultations with Public Health and Natural England. These consultees both raised concerns that by not requiring that a floating cover be placed on the slurry lagoon, there was the potential for odours and emissions of ammonia emanating from the lagoon that would be harmful to the living conditions of local residents and harmful to the environment.
9. The main parties have both referred to the guidance produced by the Department for Environment Food and Rural Affairs in July 2018, entitled 'Code of Good Agricultural Practice (COGAP) for Reducing Ammonia Emissions'. The COGAP provides details and guidance on the measures that the farming industry are encouraged to take in relation to the prevention of emissions of ammonia which can have significant adverse effects on the environment and the health of those living or working close to areas where organic manures are stored.
10. The COGAP indicates that, in some instances, a 'natural crust' may form on top of the liquid organic manure and that this may reduce emissions of ammonia by up to 40%. The Appellant maintains that the lagoon does form a natural crust and at the time of my visit it did appear that such a crust had formed on the slurry contained within the lagoon.

¹ Adopted July 2007.

² Adopted October 2013

11. However, the COGAP is clear in that whilst a natural crust can reduce ammonia emissions, storage systems with large surface areas such as lagoons have a greater potential for ammonia emissions as more slurry is exposed to air movements. The code concludes that in respect of lagoons, effective mitigation measures, such as covers, should be planned for in order to help reduce emissions. In this respect, the guidance indicates that provision of covers can reduce ammonia emissions by 60% and I would conclude that this represents a significant improvement over reliance on a natural crust to help reduce harmful emissions and odours.
12. Whilst I acknowledge that the process of liquid organic manure storage is part and parcel of dairy farming activity, and that the Appellant maintains that regular 'sniff tests' have been carried out which demonstrate that no significant odours are generated from the lagoon, there is no evidence before me which provides details of when such tests were conducted nor any details of the weather conditions that applied at the time.
13. However, it is stated by the Appellant that there are occasions when the lagoon does emit odours to a significant degree, and that there is concern that by requiring that a cover be fitted to the lagoon, this would bring into question the viability of the farm.
14. In this regard, the Appellant has put it to me that, principally for economic reasons, they wish to continue using the lagoon without installing any cover as the likely cost of installation would be approximately £30,000.00. However, I have not been provided with any evidence to support this contention and I note that the COGAP does confirm that financial support in the form of grants may be available in order to meet the costs of installing equipment such as covers for slurry lagoons. I have no evidence before me that confirms that any applications for such grants have been made, nor have I been provided with any substantive evidence that the costs of installation would significantly affect the viability of the dairy enterprise.
15. Further to the above, the Appellant maintains that, as described within the COGAP, any odours or emissions emanating from the lagoon, could be diffused by placing additional trees and planting around the lagoon and that such planting could be secured by planning condition.
16. In this respect, whilst this may result in some improvement, there are no details before me which demonstrate that sufficient planting around the lagoon can be achieved without impacting on efficient use of the lagoon with regards to access by farm vehicles and machinery. Furthermore, it is noted that the COGAP states that additional planting should be considered in addition to covers to further reduce the adverse impacts of emissions. I therefore consider that alternative planning conditions requiring that additional vegetation be placed around the lagoon, would not be sufficient to overcome the harm to living conditions of local residents nor the potential harm to the environment.
17. For the above reasons, and having considered the submissions of the main parties in respect of the guidance contained within the COGAP, the findings of Public Health and Natural England and the complaints that the Council has received from local residents, I therefore conclude that without the installation of a cover over the slurry lagoon, the proposed use of the lagoon would be likely to have a harmful effect on the living conditions of local residents and would be harmful to the environment.

18. The disputed condition is therefore reasonable and necessary in its current form. For the reasons given above, without the installation of a cover, the development would conflict with Policy COR18 of the Core Strategy and would be contrary to Policies DM7 and DM22 of the Local Plan.
19. The Appellant has put it to me that a similar planning condition was not imposed in respect of a slurry lagoon which is located on another farm close to the appeal site and which, it is maintained, is sited closer to residential development than the slurry lagoon that is the subject of this appeal. In this respect, the evidence before me indicates that the nearby lagoon as referred to by the Appellant was granted permission before the production of the recent COGAP guidance.
20. Whilst I sympathise with the Appellant's position with regards to the apparent consistency of these decisions, I must acknowledge that the relevant COGAP guidance represents the up to date position with regards to current understanding of how such forms of development may impact on the environment and upon the living conditions of residents. In my view, it is therefore entirely reasonable that the Council follow the most up to date information and guidance available when assessing planning applications and in relation to consideration of conditions that are necessary in order to make development acceptable in planning terms.

Conclusions

21. For the reasons given above, I conclude that the appeal should be dismissed.

A Spencer-Peet

INSPECTOR