

**COPELAND BOROUGH COUNCIL  
DELEGATED PLANNING DECISION**

1.	<b>Reference No:</b>	4/21/2465/OB1
2.	<b>Proposed Development:</b>	VARIATION OF CONDITION 3 OF PLANNING APPROVAL 4/20/2338/OF1 FORMATION OF A SLURRY LAGOON RELATING TO REQUIREMENT FOR IMPERMEABLE COVER
3.	<b>Location:</b>	THREAPTHWAITE FARM, BOWTHORN ROAD, CLEATOR MOOR
4.	<b>Parish:</b>	Arlecdon and Frizington
5.	<b>Constraints:</b>	ASC;Adverts - ASC;Adverts, Coal - Standing Advice - Data Subject To Change
6.	<b>Publicity Representations &amp;Policy</b>	Neighbour Notification Letter: YES  Site Notice: NO  Press Notice: NO  Consultation Responses: See report  Relevant Planning Policies: See report
7.	<b>Report:</b>  <b>INTRODUCTION</b>  <p>This application relates to Threapthwaite Farm, situated to the north east of Cleator Moor off Bowthorn Road. There are open fields surrounding the site with the closest residential properties being Rheda Terrace approximately 155m to the east and Bowthorn approximately 165m to the west.</p> <p>The B5294 runs adjacent to the site to the south.</p> <b>RELEVANT PLANNING APPLICATION HISTORY</b>  <p>Formation of a slurry lagoon, approved in June 2021 (application reference 4/20/2338/OF1 relates).</p> <b>PROPOSAL</b>  <p>This application seeks to amend the previously approved scheme to allow a period of up to 12 months where the slurry lagoon remains uncovered.</p> <b>CONSULTATION RESPONSES</b>	

Arlecdon and Frizington Parish Council

No objections.

Environmental Health

1<sup>st</sup> Consultation

Regarding the above planning variation application.

Having visited the location, and spoken with the applicants, there are no guarantees that the proposed lagoon will not cause an odour problem, given its size and location in relation to Rheda Terrace.

There are numerous small open slurry lagoons on the farm at present, as well as a larger covered tank.

The slurry in the open lagoons does form a hard surface crust over time, and this has the effect of containing the gases and smell in the liquid below.

I do not know, however, the likely timescale that a surface crust will form on the much larger open lagoon though research has indicated after 24 hours depending on weather conditions.

The difficulties that the applicant faces are mainly twofold – financially and finding a suitable supplier of a retractable cover for the slurry lagoon.

The applicant wishes to make a DEFRA grant application to assist with the costs, and my understanding is that the DEFRA grants may be available in the new financial year after April 2022.

If the variation were to be approved, the only protection that we could request is that an odour management plan is put in place by the applicants.

This could deal with how the slurry is transferred from the farm to the lagoon, avoiding undue splashing, spillage and liquid agitation, weather conditions when the slurry is transferred, working hours, possible planting of vegetation around the lagoon to assist as a rudimentary odour barrier, monitoring of odours etc.

The fall-back position that the open lagoon becomes problematic from an odour perspective, would be that the lagoon would have to be emptied and the slurry spread or transferred elsewhere at the earliest opportunity.

From speaking to the applicants, it appears as if more regular slurry spreading is likely in any case if

the planning variation is refused, with the resultant air / water pollution problems this entails.

I will therefore provide a neutral comment on the application, with the suggestion that a suitable odour management plan may be provided and approved, and that the plan shall be complied with for the duration of its use, to safeguard the amenity of the nearby premises and the area generally.

#### 2<sup>nd</sup> Consultation

I am satisfied that the full odour management plan provided is sufficient and that this development can proceed.

From visiting Threapthwaite Farm recently, it is likely that the slurry lagoon may not be used until late 2022 in any case and this delay may assist in getting the cover sourced and constructed.

I note that other similar slurry lagoons are being approved through the planning process across England with requirements for covers, so a manufacturer/s of the covers is expected.

To confirm and make clear, I am satisfied that the odour management plan provided is sufficient as an interim measure until, and in addition to, the slurry lagoon cover being fitted at the earliest opportunity as originally agreed.

#### Environment Agency

##### 1<sup>st</sup> Consultation

No objections.

##### 2<sup>nd</sup> Consultation

We have no objections to his application. We would reiterate comments included in our previous consultation response to planning application 4/20/2338/0F1 dated 05 May 2021 (ref. NO/2020/112927/03-L01) (outlined below).

We have no objection to the proposed development as submitted, but would like to make the following comment.

The applicant is advised to review the existing on-farm slurry and manure storage and ensure compliance with the SSAFO Regulations. You must inform the Environment Agency of a new, reconstructed or enlarged slurry store, silage clamp or fuel store at least 14 days before starting any construction work. The notification must include the type of structure, the proposed design and construction. Further guidance, including how to calculate capacity, is available at:

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

Any proposals for earth-banked slurry lagoons will require an impermeable clay base to a minimum depth of one metre. To ensure compliance with SSAFO, applicants will need to provide us with details of percolation tests to demonstrate that the ground conditions at the base of the lagoon are appropriate. Where percolation tests show that the soil or underlying ground is not suitable, it will be necessary to use a synthetic material or import impermeable soils to act as a liner for the lagoon. The earth banked walls will also need sampling as sufficient clay soils (not less than 20% and no more than 30% clay content) are required to make the banks stable. The lagoon should be sited sufficiently far away from any watercourses and land drains.

If you would like to discuss the proposed development in relation to compliance with the SSAFO regulation, please contact us by e-mail at [AgricumbandLancs@environment-agency.gov.uk](mailto:AgricumbandLancs@environment-agency.gov.uk)

### Public Representation

The application has been advertised by way of neighbour notification letters issued to 12 no. properties.

### 1<sup>st</sup> Consultation

2 letters of objection was received raising the following concerns:

- Without a cover, the slurry pit will cause health and environmental issues;
- The farm is not working in line with current legislation;
- The site location to the west of the terrace of housing will cause prevailing winds to carry fumes, odour and airborne bacteria.

### 2<sup>nd</sup> Consultation

1 letter of objection was received raising the following concerns:

- The odour management plan focusses on smell, whereas the odour is due to the release of noxious gases which are a HSE recognized health hazard;
- Re-iteration of previous concerns raised with regards to health and environmental issues;
- No consideration has been given to the potential impact of emissions on wildlife species;
- The pole in close proximity could be difficult to service as the operator may be overcome by toxic gases and drown from falling into the lagoon;
- The landscaping scheme does not appear to have been fully undertaken yet;
- The Leconfield Industrial Estate expansion will bring more people to the area which risks exposing more people to the harmful emissions and foul odours.

### **Planning Policies**

Planning law requires applications for planning permission must be determined in accordance with

the Development Plan unless material considerations indicate otherwise.

### **Development Plan**

Copeland Local Plan 2013 – 2028 (Adopted December 2013)

#### Core Strategy

Policy ST1 – Strategic Development Principles

Policy ST2 – Strategic Development Principles

Policy ENV5 – Protecting and Enhancing the Borough's Landscapes

#### Development Management Policies (DMP)

Policy DM10 – Achieving Quality of Place

Policy DM30 – Rural Buildings

Policy DM26 – Landscaping

### **Other Material Planning Considerations**

National Planning Policy 2021 (NPPF)

#### Emerging Copeland Local Plan (ELP)

The emerging Copeland Local Plan 2017-2035 has recently been the subject of a Publication Draft Consultation. The Publication Draft Consultation builds upon the previously completed Issues and Options and Preferred Options consultations. Given the stage of preparation of the Copeland Local Plan 2017-2035 some weight can be attached to policies within the Publication Draft where no objections have been received. The Publication Draft provides an indication of the direction of travel of the emerging planning policies, which themselves have been developed in accordance with the provisions of the National Planning Policy Framework.

Strategic Policy DS1PU – Presumption in favour of Sustainable Development

Strategic Policy DS2PU – Reducing the impacts of development on Climate Change

Policy DS7PU – Hard and Soft Landscaping

Policy RE1PU – Agricultural Buildings

#### The Planning Practice Guidance (NPPG)

This web based resource was launched in March 2014 by the Department for Communities and Local Government (DCLG).

This outlines that an application can be made under Section 73 of the Town and Country Act 1990 to vary a condition associated with a permission. One of the uses of a Section 73 application is to seek a

minor material amendment, where there is a relevant condition that can be varied.

The effect of an application under Section 73 is the issue of a new permission sitting alongside the original permission which remains intact and unamended. To assist with clarity it states that decision notices should also repeat the relevant conditions from the original permission unless they have already been discharged. As a Section 73 application cannot be used to vary the time limit for implementation this condition must remain unchanged from the original permission.

## **ASSESSMENT**

### Supporting Information from Applicant

The request for a variation of condition is to allow the slurry lagoon to be functional, without the cover for a period of up to 12 months.

The Applicant still intends to provide the cover for the lagoon, however this has not been possible yet due to issues finding a supplier and obtaining a grant. The lagoon will store the slurry only from Threapthwaite Farm and will reduce the number of times that slurry will have to be spread from 12 times a year to 4 or 5 times a year. The Applicant states that this will reduce the impact overall of odour within the local community. Furthermore, the storage of the slurry retains more nutrients, therefore reducing carbon footprint, increasing quality and reducing the amount of fertilizer needed on the farm.

The odour management plan includes control measures including the pre-inspection of the material and assessment of the weather conditions prior to taking the material to the lagoon and details that the slurry will be moved by agricultural tankers and sealed equipment. The materials will be stored within the shortest possible timeframe to minimize odour impact and not moved again until it is required to allow for the odour controlling crust to form.

### Planning Policy Context

Planning policy ST1 seeks to ensure that businesses are able to continue and expand. Policy ST2 of the Local Plan supports development outside of settlements, which have a proven requirement for such location, including agriculture. Policy DM30 and section 6 of the NPPF supports proposals for new agricultural buildings as long as they are well related to existing settlement or farm complexes, and do not adversely impact on local landscapes or the amenity of nearby residential properties.

### Assessment of Variation of Condition 3

The slurry lagoon originally approved (application reference 4/20/2338/0F1) included a cover in order to mitigate the concerns of neighbours. During the consideration of this application issues were raised with regards to smell, flies, noxious gases and impacts on wildlife, however. The addition of a cover caused all objections from neighbouring properties to be removed.

	<p>The variation of conditions application initially resulted in concerns from two neighbours on Rheda Terrace who objected to the use of the slurry pit without a cover. They raised issues with regards to odour, flies, impact on health from noxious gases and impact on local wildlife. Further to a supporting statement and odour management plan. A second consultation was undertaken which raised one objection.</p> <p>Environmental Health initially raised a neutral response to the application, stating that odour issues could be created from the slurry pit and that an odour management plan should be submitted. Further to the assessment of the submitted odour management plan no objections were raised as it was considered that the plan detailed suitable mitigation in order to protect neighbouring amenity and that slurry pits are commonly in situ without a cover. The Environment Agency raised no objections.</p> <p>Whilst the concerns of the neighbours have been fully considered, statutory consultees are in agreement that the Applicant has proven that the need for the slurry pit and mitigation for neighbouring health and environmental concerns are sufficient for a 12 month period, whilst a cover is sourced.</p> <p><u>Other issues</u></p> <p>The objector raised concerns with regards to the planting scheme having not been fully undertaken. It is understood that the Applicant has begun the planting, but some species will take time to mature.</p> <p>Issues relating to the Wildlife and Countryside Act 1981 are not relevant to this planning application. .</p> <p>The objector also raised concerns with regards to the safety of the lagoon with regards to the maintenance of the adjacent pole. As this is not a material planning consideration, this has not been considered as part of the application.</p> <p><b>CONCLUSION</b></p> <p>In my opinion, the odour management plan, mitigation and justification submitted by the Applicant is sufficient to allow the operation of the slurry lagoon without a cover for a 12 month period whilst a cover is sourced. Statutory consultees are satisfied with the proposals. Whilst one neighbour is maintaining their objections, it is considered that there are no planning reasons to refuse the variation of condition.</p> <p>Overall this is considered to be an acceptable form of development which accords with the guidance set out in the NPPG and the policies within the adopted Local Plan.</p>
8.	<p><b>Recommendation:</b> Approve</p>

9.	<p><b>Conditions:</b></p> <p>1. The development hereby permitted must be commenced before the expiration of three years from the 23<sup>rd</sup> June 2021.</p> <p>Reason</p> <p>To comply with Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.</p> <p>2. Permission shall relate to the following plans and documents as received on the respective dates and development shall be carried out in accordance with them: -</p> <p>Site Location Plan, scale 1:2500, received 7<sup>th</sup> September 2020;  Proposed Slurry Lagoon Site Plan, scale 1:500, drawing number P001/002 RevB, received 27<sup>th</sup> April 2021;  Slurry Lagoon Sections, scale 1:100, drawing number P001/001 RevB, received 27<sup>th</sup> April 2021;  Manure Management Plan, written by Tom Benson, received 9<sup>th</sup> March 2021;  Odour Management Plan, written by PFK, received 9<sup>th</sup> March 2021;  Planning Statement, written by PFK, received 9<sup>th</sup> March 2021;  Proposed Planting Plan, drawing number 1.01, received 9<sup>th</sup> March 2021;  Covering letter, written by Summit Planning, received 21<sup>st</sup> October 2021;  Supporting Statement, written by BOS Associates, received 21<sup>st</sup> October 2021;  Odour Management Plan, written by Summit Planning, received 4<sup>th</sup> April 2022;  Covering letter additional information, written by Summit Planning received 4<sup>th</sup> April 2022.</p> <p>Reason</p> <p>To conform with the requirement of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.</p> <p>3. Prior to 31<sup>st</sup> January 2023 an impermeable cover must be provided and utilised in accordance with details approved by the local planning authority. The cover must remain on the slurry lagoon at all times thereafter.</p> <p>Reason</p> <p>In order to ensure the amenity of the local residents is not negatively affected and to reduce any issues with odour in accordance with Policy ST1 and DM30 of the Copeland Local Plan.</p> <p><u>Prior Use Condition</u></p> <p>4. Prior to the first use of the Slurry Lagoon hereby approved, planting and screening must be undertaken in accordance with the landscaping plan submitted, "proposed planting plan,</p>
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drawing number 1.01, received 9<sup>th</sup> March 2021". Planting and landscaping must be retained as such at all times thereafter.

**Reason**

In order to ensure that the development is well screened and in accordance with Policies DM26 and DM30 of the Copeland Local Plan.

**Other Conditions**

5. Development must be carried out and managed at all times in accordance with the Odour Management Plan and Manure Management Plan, submitted to the Local Planning Authority on 9<sup>th</sup> March 2021 and the Odour Management Plan and covering letter received on 4<sup>th</sup> April 2022.

**Reason**

In order to ensure the amenity of the neighbouring properties in accordance with Policy DM30 of the Copeland Local Plan.

**Informatives**

- 1) The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at:

[www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

- 2) The applicant is advised to review the existing on-farm slurry and manure storage and ensure compliance with the SSAFO Regulations. You must inform the Environment Agency of a new, reconstructed or enlarged slurry store, silage clamp or fuel store at least 14 days before starting any construction work. The notification must include the type of structure, the proposed design and construction. Further guidance, including how to calculate capacity, is available at:

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**Statement**

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received, and subsequently determining to grant a variation of conditions in accordance with the presumption in favour of sustainable development as set out in the National Planning Policy Framework.

**Case Officer: Sarah Papaleo**

**Date : 16<sup>th</sup> May 2022**

**Authorising Officer: N.J. Hayhurst**

**Date : 23/05/2022**

**Dedicated responses to:-**