

<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>11 FEBRUARY 2015</b>
<b>TITLE OF REPORT:</b>	<b>P140890/N - PROPOSED CONSTRUCTION OF EARTH SLURRY LAGOON AT LAND ADJ ASHGROVE HR1 3EY, EASTFIELDS FARM, BODENHAM, HR1 3HS</b>  <b>For: Mr &amp; Mrs Pugh per The Courtyard, 9 Timothy's Bridge Road, Stratford-Upon-Avon, Warwickshire, CV37 9NP</b>
<b>WEBSITE LINK:</b>	<a href="https://www.herefordshire.gov.uk/planning-and-building-control/development-control/planning-applications/details?id=140890&amp;search=140890">https://www.herefordshire.gov.uk/planning-and-building-control/development-control/planning-applications/details?id=140890&amp;search=140890</a>
<b>Reason Application Submitted to Committee – Re-direction</b>	

**Date Received: 24 March 2014**

**Ward: Sutton Walls**

**Grid Ref: SO 5391, 5008**

**Expiry Date: 23 June 2014**

Local Members: Councillor K S Guthrie, and Councillor JW Millar (adjoining ward)

## **1 Site Description and Proposal**

- 1.1 Eastfields Farm lies on the C1125 Road within the village of Bodenham Moor, approximately 1 kilometre south of the A417 (Gloucester road). The farm is predominantly a dairy enterprise, currently having a herd of between 200 and 400 cattle. The farmhouse lies within Bodenham parish and is surrounded by numerous agricultural buildings in its yard, including a slurry tank and manure store close to residential dwellings.
- 1.2 This application is a resubmission of a previously-refused application to regularise a substantially complete slurry storage lagoon, measuring approximately 1,380 square metres area across the top of the embankments. The site affects land 500 metres west of the applicant's farm complex, on an elevated site over 45 metres higher than the farm. The application site is within Marden parish, and adjoins the parish and ward boundary.
- 1.3 The site is remote, apart from its proximity to the nearest neighbour. The property boundary with Ashgrove Farm is approximately 70 metres from the site boundary, whilst the house and farm buildings are just over 250 metres away. There are no other neighbours within 500 metres of the site. The site is also distant from the public highway. Public footpath MR5 runs north/south through Ashgrove Farm about 300 metres west of the site, and is not affected by the development. The Bodenham primary electricity substation is located below the site on the U94021 road to the north, at the bottom of the steep escarpment about 150 metres away.

## **2. Policies**

- 2.1 **National Planning Policy Framework (NPPF):** This came into force in March 2012 and carries most weight. It defines 'sustainable development' and is regarded in its entirety. In this case, paragraphs 6-17, sections 3, 7, 11 and 12, and paragraphs 186-206 are particularly

relevant. **The National Planning Policy Guidance (NPPG)** was introduced as on-line support in 2014.

- 2.2 **Herefordshire Unitary Development Plan 2007 (UDP):** Determination of planning applications must be made in accordance with the adopted development plan 'unless material considerations indicate otherwise' (s38(6) Planning and Compulsory Purchase Act 2004). Policies formally 'saved' during the development of the Core Strategy remain in force and carry weight, where they accord with the NPPF. The following policies are considered relevant in this case:

Part I

Policy S1	-	Sustainable development
Policy S2	-	Development requirements
Policy S6	-	Transport
Policy S7	-	Natural and historic heritage

Part II

Policy DR1	-	Design
Policy DR4	-	Environment
Policy DR7	-	Flood risk
Policy DR9	-	Air quality
Policy DR10	-	Contaminated land
Policy DR11	-	Soil quality
Policy E13	-	Agricultural and forestry development
Policy LA2	-	Landscape character
Policy LA5	-	Protection of trees, woodlands and hedgerows
Policy LA6	-	Landscaping schemes
Policy NC1	-	Biodiversity and development
Policy NC7	-	Compensation for loss of biodiversity
Policy NC8	-	Habitat creation, restoration and enhancement
Policy ARCH1	-	Archaeological assessments and field evaluations
Policy M5	-	Safeguarding mineral reserves

- 2.3 **Herefordshire Core Strategy:** At the time of writing an Independent Inspector is in the process of examining the Core Strategy (CS) in order to determine its soundness. The majority of the policies were subject to objection. As the examination in public is not yet complete the CS can be afforded only limited weight for the purposes of decision making. The following policies are noted as relevant for reference:

Policy SS1	-	Presumption in favour of sustainable development
Policy SS4	-	Movement and transportation
Policy SS6	-	Addressing climate change
Policy LD1	-	Landscape and townscape
Policy LD2	-	Biodiversity and geodiversity
Policy LD3	-	Green infrastructure
Policy LD4	-	Historic environment and heritage assets
Policy RA3	-	Herefordshire's countryside
Policy RA6	-	Rural economy
Policy MT1	-	Traffic management, highway safety and promoting active travel

- 2.4 The Unitary Development Plan policies together with any relevant supplementary planning documentation can be viewed on the Council's website by using the following link:-  
<https://www.herefordshire.gov.uk/planning-and-building-control/planning-policy/unitary-development-plan>

## 2.5 **Legislation:**

Water Resources Control of Pollution (Silage, Slurry and agricultural fuel oil) regulations 2010 (England) and as amended 2013 (The SSAFO Regulations)

The Nitrate Vulnerable Zone Regulations 2012 (The NVZ Regulations)

The Conservation of Species and Habitats Regulations 2010 as amended 2012 (The Habitat Regulations).

## 3. **Planning History**

### 3.1 On site:

P121420/N	retention of slurry lagoon	-	Refused 15 August 2012
P131180/N	resubmission for lagoon	-	Withdrawn 26 July 2013

Relevant agricultural development at Eastfields farm:

85/0920	agricultural building		
91/0144	extend slurry store	-	Approved 29 May 1991
NC99/1367/F	slurry tank	-	Approved 26 Sep. 1999
NC01/2010/S	agricultural building	-	Approved 3 Sep. 2001
NC03/0778/F	silage store	-	Approved 30 April 2003
NC04/0993/F	agricultural building	-	Approved 11 May 2004
P141014/F	slurry separator	-	Approved 22 July 2014

## 4. **Consultation Summary**

### Statutory Consultees

- 4.1 Environment Agency: No objection. All farmers must comply with the SSAFO Regulations, in order to prevent water pollution. This requirement is regulated by the Environment Agency.
- 4.2 Natural England: Initial concerns, but withdrawn on receipt of the HRA Screening result (see below). The resubmission addresses the reasons for the first objection. No objection. Concur with Environment Agency's view.
- 4.3 Western Power: Whilst the location of the lagoon is not ideal, our engineers are satisfied that the revised design of the lagoon has sufficiently addressed the risks to our substation site. We therefore do not wish to object to this application and would withdraw our previous objection.

### Internal advice

#### 4.3 Conservation Manager (Ecology)

The removal of spoil from around the adjacent mature trees is a priority. Objection due to a lack of any ecological or tree survey. Nonetheless, conditions are recommended to ensure species protection and to secure an arboricultural survey with remedial action recommendations and appropriate landscaping.

Habitats Regulations Assessment (HRA) Screening – No Likely Significant Effects on the River Wye SSSI/SAC, due to inclusion of a sealed liner to the lagoon.

#### 4.4 Conservation Manager (Archaeology)

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Further information on the subject of this report is available from Mrs D Klein on 01432 260136

An archaeological evaluation is urgently necessary, to assess potential harm to significant heritage assets in the vicinity. Subsequently this work was carried out under an approved scheme and a report submitted, which the archaeological Advisor considers acceptable with no further action required.

#### 4.5 Head of Environmental Health and Trading Standards

No objection. The location is such that unacceptable odour levels are not expected. The design must comply with the SSAFO Regulations enforced by the Environment Agency. A condition is recommended to secure a management plan, to incorporate maintenance checks and remedial action in the event of any leakage.

#### 4.6 Transportation Manager:

No highways implications, but if new works are required to culvert beneath the C1120 road, a consent is necessary.

#### 4.7 Land Drainage Advisor

No objections in principle on flooding or drainage grounds. However, ground levels in this field fall from the south toward the pond. Advice given that further storage/freeboard volume may be required to prevent the slurry lagoon from overtopping. A pre-commencement planning condition should require the applicant to provide evidence that consideration has been given to the prevention of surface water runoff from adjacent land flowing into the slurry lagoon or that the lagoon has been sized to accommodate at least an equivalent volume of runoff. We also recommend that the applicant agrees any residual risks associated with the failure of the slurry lagoon with the EA.

### 5. Representations

5.1 Marden Parish Council supports the application, considering that the previous reasons for refusal have been addressed. Request for a condition requiring monitoring/protection of local private water supplies.

5.2 Bodenham Parish Council.

1. The location of the slurry lagoon to which this application relates is in Marden Parish although the livestock slurry would be pumped from the Eastfields Farm intensive livestock unit which is sited at a central village settlement location known as The Moor within Bodenham Parish.

#### **Planning History & Background**

2. The original retrospective application (S121420/N) for consent for a lagoon was refused on 15 June 2012 on the principal grounds that it would be detrimental to the character and amenity of the area and mitigation was deemed not to be possible. A further part-retrospective application, 131180/N, was submitted on 24 April 2013 but was withdrawn by the applicant on 26 July 2013 after technical issues concerned with groundwater safety and more particularly the design of the lagoon and associated pipework were raised.

3. The current application is, in fact, a re-application of the 2013 application involving remodelling and a reduction in size from 3657m<sup>3</sup> to 3000m<sup>3</sup> with geotextile underground reinforcement and an artificial liner. A lagoon leak detection system which would require regular 'eyeballing' by a farm employee is proposed. Similar farm staff leakage monitoring is proposed for the pipeline/pumping operations. Bodenham Parish Council is concerned that there is no

automated alarm system to immediately highlight risks of pollution. The suggested monthly leak monitoring involving human intervention poses an unacceptable risk at this elevated lagoon site with the potential for a severe pollution incident involving the Western Power Distribution site and groundwater. Such risk of pollution was highlighted by specialist ground water Consultant Steve Bennett in a letter of 26 July 2013 in the context of earlier application 131180 and, although mitigation is now proposed using a liner, there remains an, albeit somewhat lesser, risk of a pollution incident which would still have unacceptable and devastating consequences.

4. The accompanying Planning Statement states that the pipeline will cross Dunfield Lane (U94021) via a culvert but no indication is given whether the necessary consent for this has been obtained from the Highway Authority. Normally such consent is required for the culvert design and to “install private apparatus within the confines of the public highway”.

5. Notwithstanding the above comments the Planning Statement submitted with the current application attempts to address objections and other concerns raised previously about the construction and operation methodology.

### **Planning Policy**

6. Whilst the proposal would need to comply with a wide range of UDP and NPPF planning policies set out previously by Case Officer Debbie Klein ranging from sustainable development (S1), landscape character (LA2), natural and historic heritage (S7) to noise (DR11) and soil & air quality (DR13 & DR9); It is clear that the main purpose of the lagoon is to enable the applicants to comply with the Nitrate Vulnerable Zone (NVZ) Regulations slurry storage regime that requires five months capacity in order to prevent nitrate/phosphate run-off.

7. It is made clear that the proposed lagoon at 3000m<sup>3</sup> will not have such 5 months capacity to handle the current herd size and an unspecified number of additional storage tanks will be required at Eastfields Farm complex to cope with the excess. No indication is given as to the number and design or the proposed specific location of these additional tanks. Similarly there is no information on the methodology for their filling and emptying, nor when this would be done.

8. Eastfields Farm has converted from primarily pasture grazing to wholly intensive husbandry over several years that has led to real community concerns and a recorded history of complaints of odour and fly nuisance by neighbouring residents at this central village location. It is widely recognised that this form of husbandry often gives rise to a wide variety of concerns and impacts including from noise, odour, insects, pollution of biodiversity features, watercourses and groundwater and impact on the landscape. Indeed, this nuisance was recognised by a Planning Inspector who, in rejecting an appeal against refusal of consent for a new house in the immediate vicinity, commented on “serious problems of infestation by flies and offensive smells (Inspectorate Ref. APP/W1850/A/03/1110001). He added “This is clearly supported by the Council’s Environmental Health Officer, who advised “no more can reasonably be done to abate the nuisance at source”. The Inspector summarised “I conclude that there is an unacceptable risk that the living conditions of future residents of the proposed dwelling would be harmed by unreasonable levels of nuisance in these respects”. The County Land Agent has also recently touched on the subject of nuisance in commenting on another application for a farm workers dwelling at the farm (email George Thompson/Matt Tomkins dated 27/11/13)

9. The conversion process to intensive husbandry at Eastfields Farm, including the installation of the existing circular slurry tank alongside the C1125, does not appear to have been covered by the General Permitted Development Order which, in any case, specifically excludes intensive livestock unit developments. Thus the adverse impacts on neighbours’ residential amenity has not been examined and tested through the normal planning process as would be done for new intensive units. As is stated at page 100 of the UDP, intensive livestock units should normally be located at least 400m from residential buildings.

10. The fact that the current applicant has stated, in connection with planning application 132141/F, that it is proposed to double the size of the intensively reared herd raises real issues of what future arrangements there are for the storage and disposal of slurry particularly bearing in mind the limited acreage of the elevated part of the farm holding where it is proposed to apply the slurry. The entire farm holding is sited within a NVZ.

11. Whilst this may not be material to the current application Bodenhams Parish Council has real concerns about the effect current, and future developments, could have in creating further nuisance to residents at this central village location.

12. "The Water Resources (Silage, Slurry and Agricultural Fuel Oil) Regulations", 2010 seeks to prevent pollution from slurry stores and it is assumed that the current proposal would need to be assessed for compliance by the Environment Agency.

### **Recommendation**

13. Bodenhams Parish Council **objects** to this proposal for the various reasons mentioned above.

14. If, however, the LPA is minded to give consent it is requested that it be conditioned to ensure full compliance with the SSAFO Regs. The Parish Council also seeks assurance, if necessary, by way of suitable conditions that will fully satisfy the objections raised above and also in respect of those raised by the Environment Agency, Western Power Distribution and the Council's specialist landscape, ecology and archaeology staff regarding the previous application.

5.3 Letters and reports have been received from the nearest neighbour, Mr and Mrs Hawnt, of Ashgrove Farm, from a local water bottling company and from Western Power. The points of objection raised personally by Mr & Mrs Hawnt are summarised as follows:

- Threats of pollution to our water supply have been reduced but not removed. Monitoring would only highlight leakage after the event.
- We are unable to secure a mains water supply due to the terrain, so this issue is important;
- Vibrations from the initial excavations adversely affected our medieval property;
- The threat to our livestock has not been addressed. Our veterinary advisor has concerns about the proximity of the lagoon to our boundary and the threat of airborne disease and insects;
- Adverse effects on valuable historic landscape and archaeological features
- Alternative sites exist but have not been followed up;
- Concerns about odour nuisance.

Three professional reports were also commissioned by Mr & Mrs Hawnt to investigate and comment on their concerns. Some of the remarks are repeated from previous applications. The three reports are summarised as follows:

- Veterinary Consultancy Services Ltd (Peter Jinman OBE BVet Med, DipArb, FCIArb, MRCVS, ARAqs) (undated report): Slurry lagoons must meet the SSAFO Regulations, the Code of Good Agricultural Practice, and Nitrogen Vulnerable Zone requirements. The application is unclear as to how these are, or could be, met. Concerns about proximity, in terms of disease risk and odours, which increases with climate change due to new diseases spreading from Europe. There should be a distance of 400 yards between such lagoons and any non-agricultural building where people work. Ashgrove Farm is a dwelling, agricultural holding and a separate business. The lagoon constitutes a risk to Ashgrove Farm and potentially to human health.
- Fisher German LLP (letter 25 April 2014): This application lacks detail and does not resolve all of the reasons for the previous refusal. Repeat previous concerns about the size

of the lagoon, potential impact on the borehole/water supply, biosecurity risks at Ashgrove Farm, construction methods, landscape, archaeology, ecology and trees. Also concerns as to adequacy of the lagoon's capacity. Serious fears about potential harm to the neighbour's water supplies, as liners are vulnerable to mechanical damage and may leak. Concerns about animal health are expressed in light of the veterinary report noted above. Landscape objections have not been addressed and the site is visible from the public footpath and as a skyline feature on the prominent hilltop. Archaeological work is still outstanding.

- S. Bennett (groundwater consultant) letter 10 June 2013: Risk of pollution from the lagoon, affecting domestic and agricultural private water supplies known to be potable without treatment. The borehole is about 50 years old and penetrates the Raglan mudstone to a depth of over 11 metres. Risks may be mitigated but not eliminated by a lining, even if undertaken to a very high quality. I agree with the Environment Agency's requirement for assurances as to the quality of materials to be used for lining the lagoon.

5.4 Whitemills Ltd: Previous objections in our letter dated 10 July 2013 are maintained. Little Berrington Farm is about 900 metres west of the application site, where we operate a water bottling business reliant on a borehole. Seriously concerns about water contamination should a leak occur. We have sought advice from a hydrologist and understand that the underlying geology is subject to fissures and faults through which polluted water can infiltrate. The local clay on site is not of a quality which can produce a fully impermeable liner. We also maintain our previous concerns about impacts on landscape, archaeology, ecology and trees.

5.5 The consultation responses can be viewed on the Council's website by using the following link:-  
<http://news.herefordshire.gov.uk/housing/planning/searchplanningapplications.aspx>

Internet access is available at the Council's Customer Service Centres:-

<https://www.herefordshire.gov.uk/government-citizens-and-rights/customer-services-enquiries/contact-details?q=customer&type=suggestedpage>

## 6. Officer's Appraisal

6.1 A slurry storage lagoon with substantial embankments was constructed prior to June 2012 when a retrospective application was made (reference 121420/N), which was refused on 15 August 2012. The lagoon was not completed and works ceased at that point. It has not been brought into use, pending regularisation and Environment Agency approval. A further application for a larger facility on a slightly realigned site was made in 2013 (reference 131180/N) but was withdrawn pending receipt of better information and design. This new application is a resubmission to retain, remodel and complete the works, and is therefore part-retrospective. Proposed design amendments would reduce the size of the lagoon from 4,570 cubic metres to 3,000 cubic metres with an additional 750mm freeboard allowance, reduce the gradient of the lagoon sides, and provide an impermeable artificial liner. The lagoon's internal top area would be 1380m<sup>2</sup>. By virtue of its size and location the lagoon falls outside the Permitted Development rights for agriculture. Since the above unsuccessful applications, permission has been granted for a slurry separator at the existing tank in the farmyard (reference 141014/F, July 2014). This reduces the storage capacity demand, by removing solid material bulk volume.

6.2 The National Planning Policy Framework (NPPF) favours sustainable development (as defined), part of which both supports rural economies and protects the environment. The Nitrate Vulnerable Zone Regulations (NVZ Regs) require farmers to provide 5 months slurry storage capacity. The aim is to minimise diffuse pollution from nitrate and phosphate run-off by restricting spreading periods. The initial deadline for compliance was in January 2012. However, other considerations including planning issues are not overruled. Section 7 of the NPPF requires 'good design'. Section 11 seeks to 'conserve and enhance' the natural environment including landscape value, ecology and geology. Section 12 protects heritage and section 13 requires conservation of mineral resources. Paragraphs 188 – 192 express the

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Further information on the subject of this report is available from Mrs D Klein on 01432 260136

benefits of pre-application advice. Paragraph 196 stresses the need for all development to comply with adopted policy.

6.3 The Herefordshire Draft Core Strategy is currently under consideration by the Inspector. Relevant policies are listed above, but carry less weight than the NPPF or UDP at present, noting the retrospective element of this application, which pre-dates the Core Strategy.

6.4 Principle of the development

The need for slurry storage in order to meet new regulations to combat diffuse pollution is recognised. Although a material consideration, this does not override functionality, form and landscape considerations. UDP Policies S2, DR1 and LA2 require all development to achieve a high standard of design, respect the existing surroundings and prevent pollution. In this case there have been serious concerns, which carry weight despite the acknowledged need. The application is substantially retrospective and did not benefit from any pre-application advice. However, since the previous unsuccessful submissions, the applicant's agent has been working with the planning and Environment Agency requirements to find a workable compromise and address the concerns. A pragmatic approach has been adopted in this case. This application differs from previous attempts as follows:

- Reducing the capacity to 3,000 cubic metres (from the original 3,657 cubic metres)
- Remodelling the lagoon embankments to lessen the gradients and move away from the woodland
- Installing an artificial liner.

6.5 Sustainability

The National Planning Policy Framework (NPPF) defines 'Sustainable Development' in terms of three strands. There is a presumption in favour of proposals which meet the criteria. The proposal meets the economic role for farming needs, but must address the social role requirements in terms of a 'high quality build environment' which 'reflects the community's needs'. It must also meet the environmental role criteria, to 'protect and enhance' the natural and historic environment in order to gain support.

6.6 Site choice

Much of the lower-level land comprising Eastfield Farm is on high risk flood plain, and/or on permeable gravels. This, along with groundwater protection requirements, limits location options for slurry storage. Whilst other potential sites might exist, the applicant has not found anywhere suitable near the farm. The proposed site is convenient for accessing land where the slurry would be spread as fertiliser. It would be pumped up from the farm twice a year, using a culvert under the U94021 road. The application states that the lagoon is appropriately located on the underlying Raglan Mudstone Formation. However the original excavation broke through a porous limestone calcrete layer. The Environment Agency instructed the applicant to stop work until remedial work to a satisfactory standard had been undertaken. The lagoon as first constructed could not be used, or signed off under the Silage Slurry and Agricultural Fuel Oil Regulations 2010 (SSAFO Regs). At the same time it became clear that planning permission was also needed.

6.7 It is acknowledged by all parties that mistakes have been made, before the local authority became aware of this development. Since then officers have been working pro-actively with the agent and the Environment Agency to find a workable outcome bearing in mind practicalities and potential alternatives. The location is not ideal, and the geology has in fact proved to be problematic. The site is on the brow of a prominent steep hill, a number of mature trees have suffered from soil level changes to their root systems, and it is close to the neighbouring property boundary. Furthermore, the general area is archaeologically sensitive and the hilltop is a parish boundary of considerable age. There is no easy solution but on balance officers consider that, provided other factors are fully and properly met, it would be more expedient to rectify existing works rather than starting again on a different site. Remedial works to mature trees are required in any case, and form part of this application.



- 6.8 Pollution and nuisance prevention, groundwater protection  
These are key considerations which the previous applications did not fully address. The concerns of the neighbours and the professional reports commissioned and submitted by them have been considered very carefully and taken into account. Particular attention has been paid to the potential for pollution to groundwater and/or private water supplies. Properties and businesses in the vicinity depend upon private water supplies. However the lagoon site is more than 50 metres from any spring or borehole, and more than 10 metres from any watercourse. These are the basic siting requirements set by Defra and the Environment Agency in on-line guidance for farming in NVZs, and for slurry storage, to which the application has referred.
- 6.9 The lagoon sits on a slope. On the high side it cuts into the existing surface by approximately 4.25m. On the low side the embankment is built up to a maximum height of approximately 3m above original ground level. The application proposes raised embankment side slopes of 1 in 1.5, constructed using a geo-grid as reinforcement of the clay used in construction. This would reduce the steep gradient of the as-built bank-sides. The lagoon would be lined with a high density polyethylene (HDPE) impermeable membrane and would include a linear collector drain beneath the lagoon for groundwater sampling.
- 6.10 The groundwater consultant's letter to the objectors dated 10 June 2013, and submitted as part of their objection, proffers geological advice and comments on possible impacts. It concludes that, due to the specific qualities of the Raglan Mudstone Formation in this area, a significant risk to groundwater would arise 'unless mitigated by a high quality natural or artificial liner'. In this new application, an artificial liner is proposed, and details of a leak detection system are proposed.
- 6.11 The Environment Agency has accepted the submitted details and has no objection. It has pointed out that the lagoon could not be operated without compliance with the SSAFO Regulations, quite separately from any planning permission. The advice from Environmental Health & Trading Standards accords with this view, recommending a management plan should be submitted. However, this has been included in the application and so has been addressed. The advice goes on to state 'compliance with these [the SSAFO Regulations] and other legislative requirements as enforced by the Environment Agency should ensure that there is no unacceptable level of risk to Controlled Waters and Private Water Supplies'. As a result, officers now consider the proposal for a lined lagoon can meet the requirements of the NPPF and UDP policies S2, DR1 and DR4.
- 6.12 Construction Quality Assurance Plan (CQAP)  
As a result of previous negotiations with the local authority and Environment Agency, this application includes a CQAP. This sets out the construction methodology for the remodelling of the lagoon, the installation of the liner and the inclusion of a leak detection system. The CQAP must also meet the SSAFO Regulations, and should provide assurances for both this and for planning requirements. Its implementation may be secured by a planning condition.
- 6.13 Operational management  
The application includes an appendix for operational management. The lagoon would be filled twice a year, by umbilical pipes and a tractor-driven pump to cover the height and distance. A culvert would be used for the pipe to cross the U49021 road. The use of a slurry separator at the farm reduces the solid material and thus the risk of pipe blockages, as well as the volume to be pumped. Details are given as to leak prevention or containment during filling, and also for leak detection and actions to be applied on a daily basis at the lagoon. Inspection Operational standards to be met are set by this document, which should also correspond with SSAFO Regulations requirements. Officers accept this approach in principle, in order to meet UDP policies S2, DR1 and DR4.

6.14 Flood Risk and drainage

Calculations for the volume of the slurry lagoon have taken into consideration average surface water runoff from concrete surface areas and the volume of rainfall that will fall on the surface area of the lagoon, based on standard average annual rainfall over a 5 month period. With a 750mm freeboard allowance included within the design, the risk of overtopping of the lagoon is considered low.

6.15 The Drainage Advisor has no objections in principle on flooding or drainage grounds, but recommends a time-limited planning condition for a drainage scheme to be submitted. The aim would be to clarify surface water run-off calculations and to ensure that the applicant agrees any residual risks associated with bank failure with the Environment Agency as the key regulator. The proposed modifications can therefore be considered to capable of meeting UDP policies S2, DR1, DR4 and DR7.

6.16 Odour and disease

The site is less than 400 metres from Ashgrove Farm. The application states that the lagoon would be filled via a pumped line, twice a year. The surface would form a natural crust that would not be regularly disturbed. Slurry storage of this type does not generally create excessive odour out of keeping with a normal agricultural environment other than occasionally, and would not be contrary to the NPPF or UDP policies S2 or DR4. The application includes a letter from Belmont Veterinary Centre as the main vets supporting Eastfields Farm since 2010. The letter adequately responds to the points raised by objectors on any potential disease threat, and offers assurances as to the quality of care and animal health.

6.17 Design and safety

As built, the lagoon has very steep sides which, at the time of inspection, were already showing signs of slippage. The proposed modifications include shallower gradients to a more practical and safer slope. With a very similar overall footprint, this would effectively reduce the volume of slurry held, as noted above. In support of this, planning permission has been granted (reference 141014/F, 22 July 2014) to install a slurry separator at the farm, where there is an existing slurry tank associated with the dairy buildings. By removing solid material, which can be dried and used as fertiliser, the volume of liquid to be pumped to the lagoon would be significantly reduced.

6.18 Western Power has considered the new proposals for remedial works and has withdrawn its previous objection in relation to the sub-station below the site.

6.19 Whilst the lagoon would still have a utilitarian appearance by its very nature, officers do consider that the proposed design would be safer and less stark, with the embankments pulled away from the trees and the brow of the hill. Access ramp arrangements would also be improved, with a concrete apron and wheel stops at the ramp base, to avoid any damage to the liner. Leak detection would be built-in, and the lagoon would be secured with a 1.5 metre high post and rail fence. Overall, officers consider the design and site safety factors to be much improved compared with the initial works. The proposals are therefore considered capable of meeting the requirements of the NPPF and UDP policies S2, DR1 and DR4.

6.20 Landscape and visual impact

The site is not visible from public viewpoints, other than distantly from public footpath MR5 to the west. The proposed remodelling of the embankments and pulling away from the hill-crest should restore the skyline profile view. It has been established that the lagoon does not meet UDP policy LA2, however slurry lagoons are utilitarian by function and nature, in any landscape character type. The improved design goes some way to fit the lagoon into its setting better. Due to new legislation in the form of the NVZ and SSAFO Regulations, farmers are obliged to provide 5 months storage capacity and so a facility of this type is essential if they are to comply. Officers accept that this can override other considerations. The modifications to the pre-existing

lagoon are regarded as an improvement, with particular reference to the parish/ward boundary and hill-crest as noted above.

6.21 Ecology and trees

Conservation comments on the previous unsuccessful applications included the following: 'The clay subsoil on the outer side of the bund has been piled against the trunks of mature woodland trees'. The then Conservation Manager (Landscape) stated '*the woodland edge and transition zone has been completely destroyed. [The] significant damage ... can only be remediated through removal of all the earth back to original ground levels and the implementation of detailed woodland edge planting and management*'. The trees are part of an attractive woodland block which is a prominent skyline feature on the ancient parish boundary between Bodenham and Marden. Although no remedial work has been undertaken, this application does propose to remove the spoil and pull the embankments away from the woodland. The proposal is to undertake a tree health (arboricultural) survey on completion, with recommendations for any necessary restoration works. The Conservation Manager (Ecology) view is that the soil needs to be removed from the trees as soon as possible. Although not ideal, this new application is considered an improvement and a planning condition is recommended under UDP policy LA5 and section 11 of the NPPF.

6.22 The application states that 'no badgers were disturbed by the 2012 excavation works' and 'there are no badger sets in the vicinity'. The Conservation Manager (Ecology) has accepted this, but offers the reminder that badgers remain a nationally protected species under the Protection of Badgers Act 1992. No ecological or arboricultural survey results were included with this or previous applications and it is understood that none was undertaken. Matters relating to trees and biodiversity do not appear to have been addressed. However, officers have been seeking ways to expedite this long-running case in the most practical way. Planning conditions appear to be the best way forward, if permission were granted, to secure compliance with UDP policies S7, LA5, NC1, NC6 and NC7 and section 11 of the NPPF.

6.23 Habitats Regulations Assessment Screening (HRA)

Due to its geological continuity with and proximity to the Lugg valley, the site falls within the catchment area for HRA screening with regard to the River Wye/Lower Lugg SSSI/SAC. The application contains no data which enables HRA screening to be undertaken or any evidence to demonstrate that there would be No Likely Significant Effects (NLSE) on the SAC. Natural England lodged an initial objection. However, the proposal to line the lagoon would prevent impacts on the SAC by default, and the Council has therefore been able to find NLSE as a result. Natural England has withdrawn its objection likewise.

6.24 Archaeology

Previous applications did not take any account of archaeological sensitivity in the general area, despite extensive excavations which have previously taken place nearby, where a Neolithic enclosure and burials were located. This omission was raised by the Archaeological Advisor, and subsequent investigations have been made to an approved scheme. No remains were found and the Archaeological Advisor now has no objections or further comments under UDP policy ARCH1.

6.25 Minerals extraction and spoil spreading

A significant volume of stone has been extracted from the lower part of the original excavation. This is evidenced as a grey layer within the strata, visible towards the bottom of the pit. The surplus stone has been separated from soils and stockpiled. It is visible on the skyline from the highway below. The application suggests that this stone be retained on the farm for future track repairs within the holding. A specific 'agricultural need and purpose' is the qualifying factor in Part 6 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 as amended. The application does not take account of UDP policies S9, M3, M5 or M7 on mineral extraction. However, this is a less critical element of the case.

6.26 Surplus spoil from the remodelling would be spread on the land adjoining to the south of the site. This is considered acceptable provided Defra soil-handling techniques would be followed, and provided no significant changes to the land profiling occurred.

6.27 Previous reasons for refusal

The reasons for refusal of application reference 121420/N included 11 clauses. Of these, 6 have been addressed or rendered unnecessary by the new application. The remaining 5 have been partially or substantially addressed, with the exception of the ecological and arboricultural issues outlined above.

Conclusion

6.28 Adequate slurry storage capacity is accepted as being mandatory under current legislation. This resubmission is regarded as a considerable improvement over previous applications, although there are still omissions relating to landscape, biodiversity and trees. However the improved design, operational management details and the inclusion of a liner have enabled a more favourable recommendation to be made. Remedial works and biodiversity issues are dependent on planning conditions to secure appropriate schemes. The operation of the lagoon is subject to the SSAFO Regulations enforced by the Environment Agency, but nevertheless this planning application has secured commitment to quality assurance. On this basis the proposal is recommended for approval subject to conditions

## RECOMMENDATION

That planning permission be granted subject to the following conditions:

1. **The development hereby permitted shall be completed in full as approved within 12 months of the date of this permission. [standard A01 reason]**
2. **B01 (approved plans)**
3. **Within six months of the date of this permission the land and woodland adjoining on the north side of the application site shall be restored to the ground levels which existed prior to the unauthorised development taking place, preparatory to remedial works to the mature woodland and in accordance with the approved plans reference 6863-2000 and 6863-5000.**

**Reason: to restore landscape character and biodiversity, to reinstate the original ground levels and to safeguard existing trees, in accordance with policies S7, LA2, LA5, and NC1 of the Herefordshire Unitary Development Plan and the requirements of the National Planning Policy Framework with particular reference to section 11.**

4. **Between March and September 2015, an ecological survey and arboricultural assessment of the woodland adjoining the north side of the application site shall be carried out by one or more suitably qualified and experienced consultants, to be appointed by the applicant to undertake this assessment and to act as ecological clerk of works to oversee the remediation. Within six weeks of completion of the survey and assessment, a written report of the findings, to include recommendations for remedial tree works (if required), replacement tree planting (if necessary), woodland ecology restoration, specific biodiversity enhancement, and scheme aftercare for a specified period of at least five years shall be submitted to the local planning authority for approval. The works shall be carried out in full, in accordance with the approved details including specified timescales and reporting.**

**Reason: to assess and remediate tree and woodland health and the local ecology in accordance with policies S7, LA2, LA5, and NC1 of the Herefordshire Unitary**

**Development Plan and the requirements of the National Planning Policy Framework with particular reference to section 11.**

- 5. Within three months of the date of this planning permission a scheme for surface water management shall be submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of projected surface water run-off to accepted calculation methodology including allowance for climate change, and either proposing the means for preventing surface water run-off from flowing into the lagoon hereby permitted from adjacent land, or providing evidence that the lagoon has been sized with adequate freeboard to accommodate the volume of run-off shown by the above calculations.**

**Reason: To prevent surcharging or over-topping of the slurry lagoon, to minimise flood risk from surface water and to comply with policies S2, DR1 and DR7 of the Herefordshire Unitary Development Plan, and the requirements of the National Planning Policy Framework.**

- 6. The development shall be carried out in accordance with the 'Construction Quality Assurance Plan' submitted as Appendix 3 to the Planning Statement which supported the application (Stansgate, March 2014).**

**Reason : To prevent pollution, to ensure a satisfactory form of development in accordance with planning and other legislation and to comply with policies S2, DR1 and DR4 of the Herefordshire Unitary Development Plan and the requirements of the National Planning Policy Framework.**

- 7. The development shall be carried out in accordance with the 'Operation Management Plan' submitted as Appendix 4 to the Planning Statement which supported the application (Stansgate, March 2014), to incorporate regular maintenance checks and remedial action in the event of any leakage.**

**Reason: To prevent pollution, to ensure a satisfactory form of development in accordance with planning and other legislation and to comply with policies S2, DR1 and DR4 of the Herefordshire Unitary Development Plan and the requirements of the National Planning Policy Framework.**

- 8. No minerals or excavated materials shall be removed from the farm-holding or sold on, and no materials classified as 'waste' shall be imported to the application site.**

**Reason: Because such activities would require consideration of other policies and legislation not consider under this application, and to ensure compliance with policies S2, DR1, DR4 and DR11 of the Herefordshire Unitary Development Plan and the requirements of the National Planning Policy Framework.**

- 9. The site remodelling and embankment remedial works shall be undertaken in accordance with current Defra soil-handling techniques and under suitable weather conditions.**

**Reason: To ensure a satisfactory form of development in accordance with planning and other legislation, to safeguard soil condition and quality, and to comply with policies S2, DR1, DR4 and DR11 of the Herefordshire Unitary Development Plan and the requirements of the National Planning Policy Framework.**

**INFORMATIVES:**

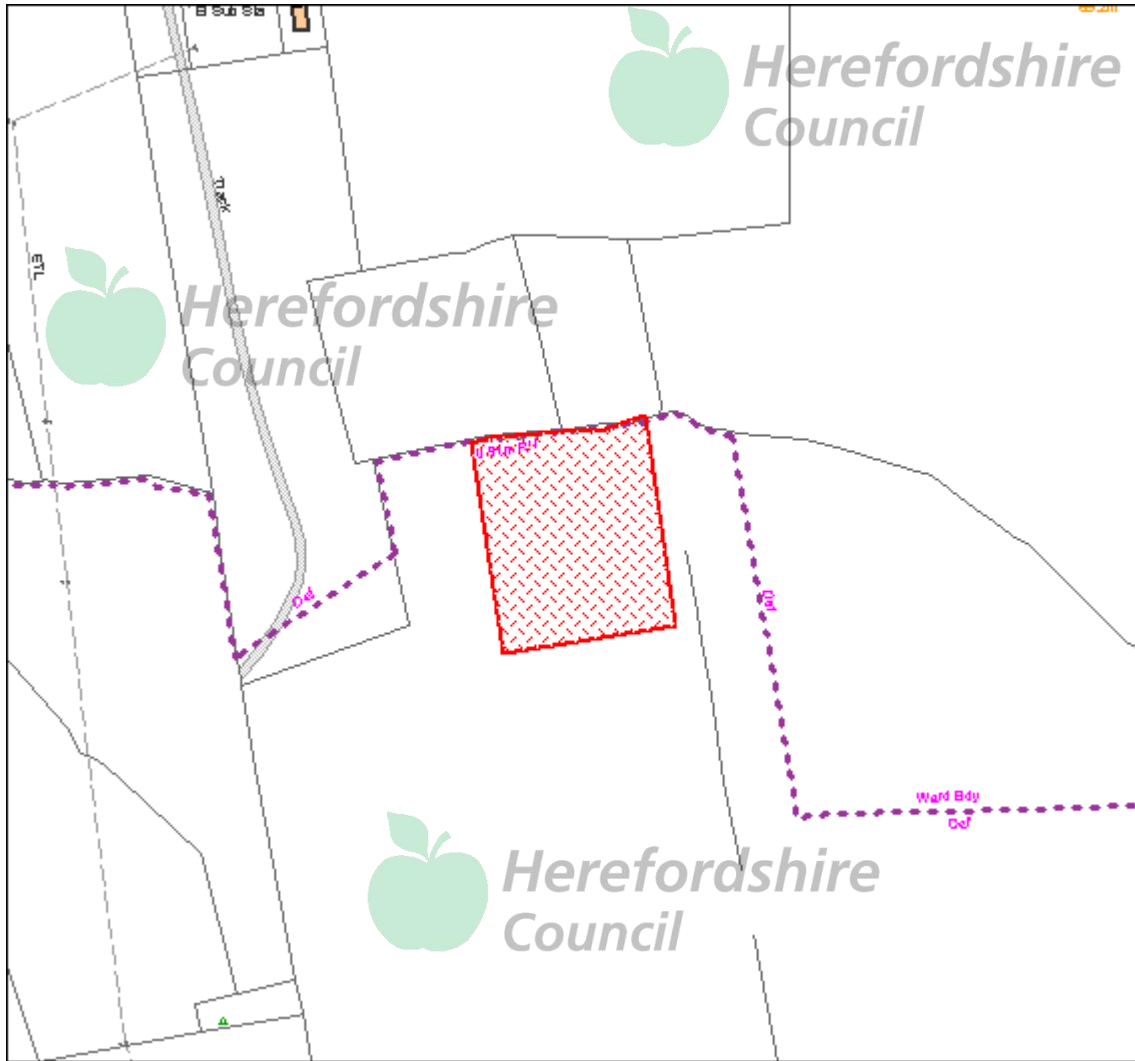
1. The local planning authority has acted positively and pro-actively in determining this application, by identifying matters of concern within the application as submitted. In recognising the retrospective nature of the application, the essential nature of the development to farming requirements, and in negotiating with the applicant's agent for acceptable additional information and amendments a positive way forward has been sought. As a result, whilst not perfect, the majority of issues have been resolved and the local planning authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development as set out by the National Planning Policy Framework
2. The Construction Quality Assurance Plan, referred to in condition 6, should be submitted to the Environment Agency as part of the SSAFO prior notification. The applicant is also advised to agree any residual risks associated with the possible failure of the slurry lagoon with the Environment Agency
3. For the surface water drainage scheme required by condition 5, Greenfield runoff to the lagoon should be fully calculated, or a worst case scenario should be adopted, which assumes 100% runoff from the field areas that discharge to the lagoon. Defra's report 'Preliminary rainfall runoff management for developments' provides guidance on how to calculate Greenfield runoff volumes. An allowance should be included (normally +20%) for climate change in these calculations, using the sensitivity ranges suggested in the technical guidance to NPPF. Alternatively, the Applicant must demonstrate how the flow of surface water run-off from surrounding land will be prevented from entering the lagoon.
4. The applicant is advised that this development is subject to regulation by the Water Resources Control of Pollution (Silage, Slurry and agricultural fuel oil) Regulations 2010 (England) and as amended 2013, which now require notification to the Environment Agency before works begin.
5. If the arboricultural assessment required by condition 4 concludes that any existing mature tree cannot be remediated as it is dead or dying, then at least three replacement trees of similar suitable native species shall be planted and the submitted scheme shall include details for this and the locations of the new trees.
6. I11 (HN01) no mud on road
7. I09 (HN04) private apparatus in/on highway [regarding culvert works]
8. I51 (HN51) highway works

Decision: .....

Notes: .....

**Background Papers**

Internal departmental consultation replies.



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**APPLICATION NO:** 140890/N

**SITE ADDRESS :** LAND ADJ ASHGROVE HR1 3EY, EASTFIELDS FARM, BODENHAM, HEREFORD, HR1 3HS

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Further information on the subject of this report is available from Mrs D Klein on 01432 260136