

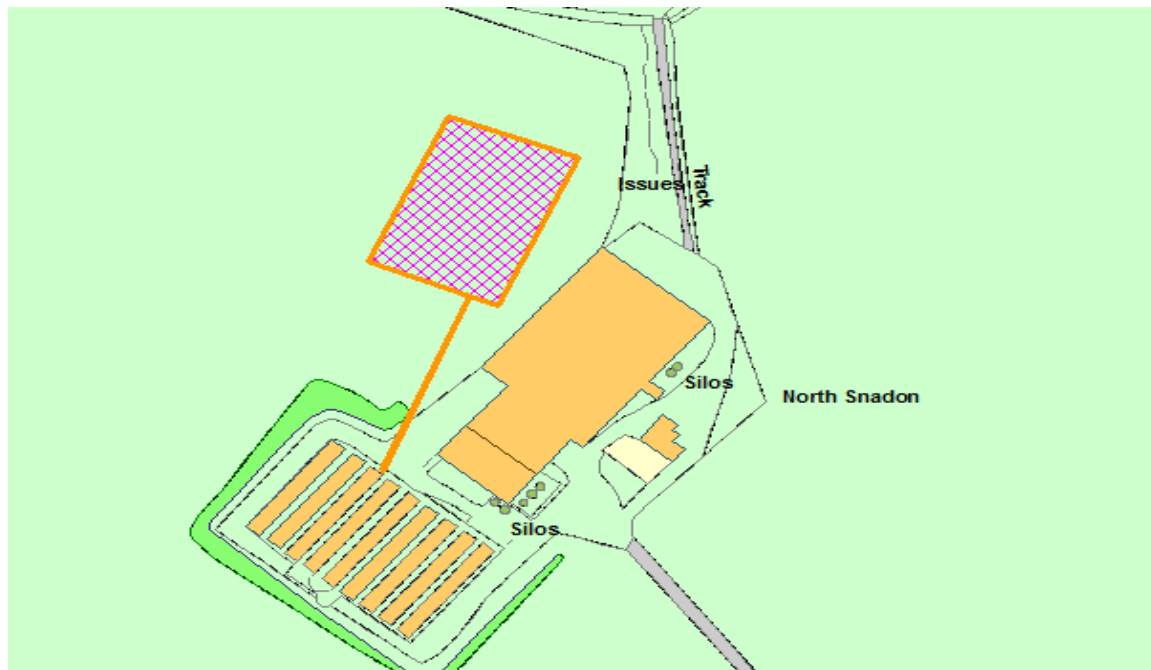
Kincardine & Mearns Area Committee Report 13 September 2022

Reference No: APP/2022/0053

Full Planning Permission for Formation of Slurry Lagoon (Retrospective) at North Snadon, St Cyrus, DD10 0DR

Applicant: East Coast Viners Ltd, Broadwood, Drumlithie, AB39 3XA
Agent: Inspired Design & Development Ltd, 27 Evan Street, Stonehaven, AB39 2EQ

Grid Ref: E:372816 N:765756
Ward No. and Name: W19 - Mearns
Application Type: Full Planning Permission
Representations: 1
Consultations: 1
Relevant Proposals Map: Aberdeenshire Local Development Plan 2017
Designations: Rural Housing Market Area
Complies with:
Development Plans: No
Main Recommendation: Refuse



NOT TO SCALE

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1. Reason for Report

1.1 The Committee is able to consider and take a decision on this item in terms of Section B.8.1 of Part 2A List of Committee Powers and Section C.3.1i of Part 2C Planning Delegations of the Scheme of Governance as the application is recommended for refusal but at least two Local Ward Members in the Ward in which the development is proposed, have requested that the application be referred to the Area Committee.

- *Councillor George Carr - Suggest further discussion at Area Committee regarding P1: Layout, siting and design.*

1.2 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and had no comments to make and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

2. Background and Proposal

2.1 This application seeks full planning permission retrospectively for the formation of a slurry lagoon at North Snadon, St Cyrus. The slurry lagoon was installed by the applicant on the understanding that the development would be permitted development under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended). Class 18 of the 1992 Order permits the installation of a slurry lagoon subject to several conditions, including that it must not be located within 400m of a residential dwelling. In this instance, there are a total of seven dwellinghouses located outwith the agricultural unit that are within 400m of the site. These dwellings and the distances from the site are noted in the table below. As such, the development cannot be permitted development and this application has been submitted retrospectively seeking planning permission for the development.

Residential Dwelling	Distance from Slurry Lagoon
Criggie House	235m
Sillycoats Cottage	245m
Sillycoats	260m
Ar Dachaidh	260m
Mill of Criggie	280m
Denhead	345m
South Snadon	390m

2.2 The application site is located in the countryside approximately 1.7km north west of the St Cyrus settlement boundary as defined by the Aberdeenshire Local Development Plan 2017. The site extends some 0.21ha and sits within the established farm North Snadon, which also features agricultural buildings of varying scale. The farm is used for pig farming and has been in operation for over twenty years. The slurry lagoon is utilised to store the waste produced by pigs at the farm which is then sprayed on neighbouring fields. The lagoon is 31m in length, 47m in width and has a maximum depth of 4m. It has been

formed with a liner over the excavations to form battered sides, with a walk round margin. The entire lagoon is surrounded by 1.9m stock proof fencing which features access gates on the north east and south east elevation. The application site is accessed via a private access track which serves the wider farm unit and runs to the north west of the u116k road. The site is surrounded by open agricultural land as well as the residential dwellings noted in the table above.

- 2.3 In support of the application, the applicant has provided a manufacturers brochure for proposed odour mitigation. This would involve a ceramic cover being placed over the lagoon which reduces the level of odour from the lagoon. The brochure provides general figures indicating the reduction in emissions from varying applications of the material. The applicant also provided a mitigation document which outlines that the lagoon was mistakenly installed in the absence of planning permission. The document highlights that the slurry from the pigs is sprayed on fields in the surrounding area regularly. The proposed mitigation in utilising the ceramic cover is noted, however, it is acknowledged that no evidence-based mitigation has been provided. The document contends that without the lagoon, the slurry would simply lie beneath the pig enclosures as it did previously, as opposed to the slurry lagoon, and would result in more applications to the surrounding fields being required, resulting in increased nuisance to neighbouring dwellings from this.

3. Representations

- 3.1 A total of 1 valid representation (1 objection) has been received as defined in the Scheme of Governance. All issues raised have been considered. The letter raises the following material issues:

- *Odour*
- *Impact to neighbouring amenity*

4. Consultations

- 4.1 **Environment and Infrastructure Services (Environmental Health)** initially objected to the proposed development on the grounds of odour. The Service noted that the development is within 400m of residential dwellings and therefore cannot be supported. The Service highlighted section 13.17 of the Prevention of Environmental Pollution from Agricultural Activity (PEPFAA) guide which states that 'new slurry store sites should not be located within 400m of residential development.' Following receipt of the proposed mitigation by way of ceramic cover, the Service maintained its objection noting that no evidence had been provided to show that the odour from the slurry at the site would be suitably mitigated. Following the submission of the Mitigation Document by the applicant, the Service maintained its objection and noted that the development may constitute a nuisance under the Environmental Protection Act 1990.

5. Relevant Planning Policies

5.1 Scottish Planning Policy

The aim of the Scottish Planning Policies is to ensure that development and changes in land use occur in suitable locations and are sustainable. The planning system must also provide protection from inappropriate development. Its primary objectives are:

- to set the land use framework for promoting sustainable economic development;
- to encourage and support regeneration; and
- to maintain and enhance the quality of the natural heritage and built environment.

Development and conservation are not mutually exclusive objectives; the aim is to resolve conflicts between the objectives set out above and to manage change. Planning policies and decisions should not prevent or inhibit development unless there are sound reasons for doing so. The planning system guides the future development and use of land in cities, towns and rural areas in the long-term public interest. The goal is a prosperous and socially just Scotland with a strong economy, homes, jobs and a good living environment for everyone.

5.2 Aberdeen City and Shire Strategic Development Plan 2020

The Strategic Development Plan (SDP) was approved on 12 August 2020.

The purpose of this Plan is to set a clear direction for the future development of the City Region. It sets the strategic framework for investment in jobs, homes and infrastructure over the next 20 years. All parts of the Strategic Development Plan area will fall within either a strategic growth area or a local growth and diversification area. Some areas are also identified as regeneration priority areas. There are also general objectives identified. In summary, these cover promoting economic growth, promoting sustainable economic development which will reduce carbon dioxide production, adapt to the effects of climate change and limit the amount of non-renewable resources used, encouraging population growth, maintaining and improving the region's built, natural and cultural assets, promoting sustainable communities and improving accessibility in developments.

The Aberdeenshire Local Development Plan 2017 will continue to be the primary document against which applications are considered. The Aberdeen City & Shire SDP 2020 as approved forms part of the Development Plan.

5.3 Aberdeenshire Local Development Plan 2017

Policy R1: Special rural areas

Policy R2: Housing and employment development elsewhere in the countryside

Policy P1: Layout, siting and design
Policy P4: Hazardous and potentially polluting developments including contaminated land

5.4 Proposed Aberdeenshire Local Development Plan 2020

Aberdeenshire Council on 5 March 2020 resolved to agree the Proposed Aberdeenshire Local Development Plan (LDP) 2020 as the “settled view of the Council” on what the final adopted content of the LDP 2022 should be. The Proposed LDP 2020 is a material consideration in the determination of planning applications. The Planning Authority must therefore assess what weight it should have in the context of this particular application. The Reporter’s report of Examination of the Proposed LDP 2020 has now been published (24 June 2022). Notwithstanding, there is currently no authority to use the Proposed Local Development plan as a substitute for the Local Development Plan 2017. The weight that can be given to the phrase “settled view of the Council” can only be interpreted in the context of the publication of the Proposed Local Development Plan 2020 (March 2020). Even with the certainty associated with the Reporters’ Report it still remains only a material consideration in determining planning applications. However, consideration will be given on a case-by-case basis where the weight of the Reporter’s Report should be given overwhelming significant weight when it is most advantageous to the applicant’s proposals. SPP Paragraph 34 is of associated relevance.

The Scheme of Governance reserves determination of planning policy to Full Council for resolution. As such until the Proposed Local Development Plan 2020 has been formally adopted by Full Council (as LDP 2022) can this be considered as the Council’s “settled view”.

It should be borne in mind that the LDP has been written to be implemented as a whole and not the selective use of agreeable parts.

On the 18 April with reference to the legislation the LDP 2017 becomes technically ‘out of date’. Notwithstanding the Aberdeenshire LDP 2017 remains the primary document against which planning applications should be determined until such time as a new LDP for the area is adopted. Currently Scottish Planning Policy (SPP) deals with this circumstance at Paragraphs 32 to 34. The policies of the LDP 2017 are reflective of the policy position within SPP. Both SPP and the National Planning Framework 3 are confirmed as significant influences on the content of the plan, as confirmed within Section 2 – ‘Influences of the Plan’. In summary, when a development plan is more than five years old the presumption in favour of sustainable development is a significant material consideration, this must be balanced against any adverse impacts of the proposed development which would significantly and demonstrably outweigh the benefits. All of these matters however are already embedded within the policies of the Local Development Plan 2017 and deemed robust in their consideration.

5.5 Other Material Considerations

None

6. Discussion

- 6.1 Paragraph 33 of Scottish Planning Policy (SPP) states that where a development plan is more than five years old, the presumption in favour of development that contributes to sustainable development will be a significant material consideration. This must be balanced against any adverse impacts of the proposed development which would significantly and demonstrably outweigh the benefits.
- 6.2 This application seeks full planning permission retrospectively for the formation of a slurry lagoon at North Snadon, St Cyrus. The main issues for consideration in this application are the principle of development, the impact on neighbouring amenity and nuisance from the proposed development. The policies contained within the Aberdeenshire Local Development Plan 2017 are the main consideration in the assessment of this application.
- 6.3 As the application site is located in the countryside outwith the greenbelt and coastal zone, the key policy consideration in assessing the principle of development is Policy R2: Housing and employment development elsewhere in the countryside. This policy supports development that would be appropriate in the greenbelt or coastal zone as outlined by Policy R1: Special rural areas. Policy R1 supports development for the purposes of agriculture and in this application, permission is sought for the erection of a slurry lagoon. The slurry lagoon would support the main use of the site as a pig farm which is clearly for the purposes of agriculture. The proposal is therefore in compliance with Policy R2, through its acceptance of Policy R1, and is acceptable in principle.
- 6.4 The general layout and design of the slurry lagoon is broadly acceptable. It is raised from a public comment objecting to the proposal that the odour results in an adverse impact to neighbouring amenity. It is contended that at a neighbouring dwelling the private garden area cannot be used because of the odour emitting from the slurry lagoon. The Planning Service conducted a site visit during the course of the planning application and the odour was strong when assessed from approximately 280m from the slurry lagoon at the farm entrance. Policy P1 notes that all development should demonstrate the six qualities of successful places. One of these qualities is that development should be safe and pleasant protecting amenity. In this instance it is clear from the site visit undertaken that the odour from the slurry lagoon is far reaching and would adversely impact neighbouring amenity. The applicant contends that the slurry would have to be spread in neighbouring fields more frequently resulting in an odour being present. Whilst this agricultural practice is common and does not require planning permission, the slurry lagoon means that a permanent odour would be present as opposed to sporadic spraying of fields. The Planning Service consider that the slurry lagoon does have an adverse impact on neighbouring amenity as a result of the odour

coming from it and the proposal, therefore, fails to comply with Policy P1: Layout, siting and design.

- 6.5 Policy P4: Hazardous and potentially polluting developments including contaminated land notes that we will refuse development if there is a risk that it could create a significant nuisance. The policy notes that agricultural uses could create a nuisance and where such a nuisance exists, satisfactory steps must be taken to mitigate any residual negative. The primary nuisance from the slurry lagoon is the odour produced by the slurry. The applicant has suggested that the odour could be mitigated through the application of a ceramic mixture on top of the slurry and has provided generic information from the supplier to support the application. The Council's Environmental Health Service was consulted and objected to the development. It considered the proposed mitigation provided by the applicant and noted that the mitigation was not evidence based and did not quantify to what extent the odour would be minimised. The Service also highlighted that the PEPFAA guidance notes that slurry lagoons should not be formed within 400m of neighbouring dwellings. The applicant provided a mitigation document highlighting that the slurry at the site would still be present given the use of the agricultural unit for pig fattening. It is contended that removing the lagoon would result in increased application to neighbouring fields where the odour will still be present. Having considered the points raised by the applicant, the Environmental Health Service maintained its objection to the proposal. It highlighted that the lagoon has been built well within the 400m distance as recommended by PEPFAA. As previously noted, the Planning Service has visited the site and the odour from the site is strong even at a distance of 280m from the site. There are seven residential dwellings located within 400m of the site at varying distances, however, each dwelling would be impacted by the odour. This would constitute a nuisance and the mitigation proposed does not demonstrate to what extent the odour would be reduced. As such, the Planning Service considers that the proposal fails to comply with Policy P4.
- 6.6 The application received one letter of representation objecting to the development on the grounds of odour and adverse impact to neighbouring amenity. Both matters have been considered in the determination of this application.
- 6.7 In conclusion, the Planning Service finds that the proposal fails to accord with the Aberdeenshire Local Development Plan 2017 on the grounds of odour and nuisance. It is evident that a strong odour comes from the slurry lagoon which is far reaching, and insufficient evidence has been provided to demonstrate that this can be suitably mitigated. As a result of this, the development is not safe and pleasant and adversely impacts neighbouring amenity. The development therefore does not comply with Policy P1: Layout, siting and design. Furthermore, the odour from the site presents a nuisance to those neighbouring dwellings and the application also fails to comply with Policy P4: Hazardous and potentially polluting developments including contaminated land. The application is therefore recommended for refusal.

- 6.8 The policies contained in the Local Development Plan 2017 remain compliant with the principles of sustainable development as guided by the SPP and therefore provide an appropriate basis for the determination of this application.
- 6.9 The presumption in favour of sustainable development is a significant material consideration, this must be balanced against any adverse impacts of the proposed development which would significantly and demonstrably outweigh the benefits. The proposed development was assessed against the Scottish Planning Policy principles of sustainable development. However, adverse impacts significantly and demonstrably outweigh the benefits of the proposal.

7. Area Implications

- 7.1 In the specific circumstances of this application there is no direct connection with the currently specified objectives and identified actions of the Local Community Plan.

8. Implications and Risk

- 8.1 An integrated impact assessment is not required because the granting or refusing of the application will not have a differential impact on the protected characteristics of the applicant or any third parties.
- 8.2 There are no staffing and financial implications.
- 8.3 There are no risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Committee is considering the application as the planning authority in a quasi-judicial role and must determine the application on its own merits in accordance with the Development Plan unless material considerations justify a departure.
- 8.4 No separate consideration of the current proposal's degree of sustainability is required as the concept is implicit to and wholly integral with the planning process against the policies of which it has been measured.

9. Departures, Notifications and Referrals

9.1 Strategic Development Plan Departures

None

9.2 Local Development Plan Departures

Policy P1: Layout, siting and design
Policy P4: Hazardous and potentially polluting developments including contaminated land

- 9.3 The application is not a Departure from the Local Development Plan and Strategic Development Plan, and no departure procedures apply.
- 9.4 The application does not fall within any of the categories contained in the Schedule of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 and the application is not required to be notified to the Scottish Ministers prior to determination.
- 9.5 The application would not have to be referred to Infrastructure Services Committee in the event of the Area Committee wishing to grant permission for the application.

10. Recommendation

10.1 REFUSE Full Planning Permission for the following reasons:-

01. The Planning Authority considers that the application is for a development that is not in accordance with the Aberdeenshire Local Development Plan 2017. The application does not comply with Policy P1: Layout, siting and design as the development is not safe and pleasant in accordance with the six qualities of successful places and adversely impacts neighbouring amenity through odour from the slurry lagoon.

The presumption in favour of sustainable development is a significant material consideration, this must be balanced against any adverse impacts of the proposed development which would significantly and demonstrably outweigh the benefits. The proposed development was assessed against the Scottish Planning Policy principles of sustainable development. However, adverse impacts significantly and demonstrably outweigh the benefits of the proposal.

02. The application does not comply with Policy P4: Hazardous and potentially polluting developments and contaminated land of the Aberdeenshire Local Development Plan 2017 as it has not been adequately demonstrated through the submission of evidence based mitigation that odour from the slurry lagoon can be suitably mitigated to an acceptable level which does not constitute a nuisance to neighbouring dwellings.

Alan Wood
Director of Environment and Infrastructure Services
Author of Report: Iain McMillan
Report Date: 3 August 2022

From: [Iain Mcmillan](#)
To: [Planning Online](#)
Subject: FW: APP/2022/0053 | Formation of Slurry Lagoon (Retrospective) | North Snadon St Cyrus Aberdeenshire DD10 ODR
Date: 22 March 2022 12:47:37

Can the below please be logged as an objection to APP/2022/0053. The same individual logged an objection which we treated as invalid as there was no address, this has now been added by the applicant.

Thanks,

Iain

[REDACTED]
Sent: 19 March 2022 11:22
To: Iain Mcmillan <iain.mcmillan@aberdeenshire.gov.uk>
Subject: Fwd: APP/2022/0053 | Formation of Slurry Lagoon (Retrospective) | North Snadon St Cyrus Aberdeenshire DD10 ODR

----- Forwarded message -----

[REDACTED]
Date: Fri, Mar 18, 2022 at 10:26 AM
Subject: APP/2022/0053 | Formation of Slurry Lagoon (Retrospective) | North Snadon St Cyrus Aberdeenshire DD10 ODR
To: <planning@aberdeenshire.gov.uk>

Good morning

We have had terrible smells coming from this slurry pit that was illegally built. We have complained numerous times to Louise Cunningham about the problem which is why this Retrospective planning app has arisen. A gassy mist also travels from it when it heats up and it lasts all day and night. We cannot sit outside in our own garden, we cannot hang out washing as it stinks all the clothes and they have to be washed again, we cannot plan any outdoor activities such as grandchildren playing outside and no windows can be opened, the list is endless.

Please do something about this. It has taken two years of suffering to get this far.

Regards

William McDermott
Sillycoats Cottage
St Cyrus
By Montrose
DD10 ODR