

Re: Retrospective Application 1/1041/2015/FULM

For an earth-banked slurry lagoon (resubmission of planning application 1/0011/2015/FULM) (Affecting public right of way) at Beckland Farm, Hartland, Bideford, Devon EX39 6AP.

This Note has been prepared in collaboration with the residents of Hartland who continue to be adversely affected by this development. The Note seeks to demonstrate the many serious flaws in the Retrospective Application and to highlight the numerous planning reasons why permission should not be granted. It has been prepared with the advice and guidance of the Environmental Law Foundation (ELF) and has been reviewed by counsel from FTB Chambers.

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1 Summary

- 1.1 Planning permission for the construction of the barn (“the Barn”) that houses the majority of the 1,000 cows forming part of the herd at Beckland Farm was granted in Nov 2008 following planning application (1/1004/2008/FUL) (“the Nov 2008 Application”). It is believed that this permission was granted on the basis of incorrect information, representations and omissions. The Council should, as a matter of priority, now investigate whether there was “*deception in the planning process intended to undermine its regular operation*” [ref 26] in connection with the Nov 2008 Application. (see section 2).
- 1.2 The Barn that was built was not the one for which planning permission was sought and granted. We believe that the Barn as built is: 85m x 45m = 3825 sq. m. This is 50% bigger than the one authorised. There is no documentary evidence that this increase in size was ever disclosed to the Council, indeed it has recently been determined that the floor plan required by Condition 3 of the permission granted was never submitted.
- 1.3 In addition the Barn has not been used for the purposes for which permission was granted (accommodation of a number of dry cows and general farm storage). Instead it has been used for an “intensive dairy farming” operation since construction and houses a substantial indoor dairy herd.
- 1.4 As part of the development that included the construction of the Barn, the applicant doubled the size of a pre-existing slurry lagoon at Beckland Farm to create a new slurry lagoon (“the Concrete Lagoon”) without the required planning permission. We understand that the Council may not have even become aware of the construction of the Concrete Lagoon for some time.
- 1.5 The herd at Beckland Farm was increased during the period Jan 2009 to Jan 2010 to 1,000 cows without regard to the requirement under SSAFO regulations to have 4 months’ slurry storage capacity in place for any such increase in the herd. [ref 3].
- 1.6 In Jan 2010, while investigating a serious pollution incident (see Appendix B) the Environment Agency (EA) determined that there was insufficient slurry storage at Beckland Farm to allow a herd of 1,000 cows to be kept at Beckland Farm.
- 1.7 The amount of storage available was just 2,083 m³ to manage an estimated slurry production of 19,968 m³ over the 4 winter months (see SADWS report, ref [3]) and provided just 12 days storage capacity, *this was*

just one tenth of the 120 days required by the SSAFO regulations. The applicant was therefore advised by the EA that a herd of 1,000 cows required substantially increased slurry storage facilities.

- 1.8** The applicant applied for planning permission in Jul 2011 for a 70m x 70m slurry lagoon at Beckland but at a different location to the much larger slurry lagoon that is the subject of the Retrospective Application. He withdrew this first application in October 2011.
- 1.9** At the end of 2011 the EA was called to Hartland to investigate the construction of a slurry lagoon at Markadon Farm to store slurry from Beckland Farm. This slurry lagoon was in the process of construction by the owners of Markadon Farm without planning permission and, we understand, was required because the Concrete Slurry Lagoon at Beckland Farm had been filled. The owners of Markadon Farm were ordered to remove this slurry lagoon.
- 1.10** As a consequence of their involvement in this matter, we understand that the EA again informed the applicant that additional slurry storage facilities were required to support a herd of 1,000 cows at Beckland Farm. The applicant then increased the slurry storage facilities by constructing an earth banked slurry lagoon 140m x 86m ("the Slurry Lagoon") but he did this without regard to the need to obtain planning permission before construction of the Slurry Lagoon began.
- 1.11** There has then followed over 5 years of delay during which four retrospective planning applications were submitted; two were withdrawn, one was refused, and there is now the current application – "the Retrospective Application" (see planning history, Appendix B).
- 1.12** Prior to the intervention of the EA in 2010, Beckland Farm was operating in breach of SSAFO regulations. It cannot be doubted that this was being done knowingly because the applicant is an experienced farmer and operates a similar facility at Sedborough Farm. It is clear that the applicant knew that the development of an intensive dairy farm at Beckland Farm without sufficient slurry storage was in breach of SSAFO regulations. The planning history of Sedborough Farm shows how these regulations were cited in various planning applications submitted before 2008 and the EA advice was clear in its response as a statutory consultee.
- 1.13** Since the herd at Beckland Farm was increased to 1,000 during the course of 2009, the operation at Beckland Farm has caused a litany of problems including environmental damage and economic damage; it has affected people's health and caused serious loss of amenity.
- 1.14** The source of many of these problems is the transportation and spreading of slurry as a result of the unauthorised intensive dairy farming operation of which the Slurry Lagoon is now an integral part.
- 1.15** The existence of this very large unauthorised Slurry Lagoon now facilitates the whole intensive dairy farming operation at Beckland Farm and allows it to operate within the SSAFO regulations. It is however essential to consider the consequences of allowing the Slurry Lagoon to remain. Because the Slurry Lagoon has existed for 5 years many of these consequences are not theoretical but are evidenced by those most affected by them i.e. residents on the Hartland Peninsula.
- 1.16** It is considered that the development of the Slurry Lagoon is a Schedule 2 Development under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 for the reasons addressed in section 4 below, and should therefore be subject to an EIA screening.
- 1.17** The volume, nature and timing of the spreading of slurry from the Slurry Lagoon is a material planning consideration in this case. It cannot be argued that the slurry spreading is independent of the Slurry Lagoon and that the slurry could reasonably originate from elsewhere. There are no other sources of slurry, in the volumes that will be stored in the Slurry Lagoon, for some considerable distance. Therefore the slurry spreading is a direct consequence of the intensive Slurry Lagoon and as such its impact needs to be considered as material to the Retrospective Application.
- 1.18** It is also considered that planning permission for the Slurry Lagoon cannot lawfully be granted on the basis of the current planning application because the documents supplied by the applicant are insufficient for the Council to be satisfied that the development will not have a significant impact on the SAC. To grant permission would therefore be contrary to Art. 6(3) of the Habitats Directive and therefore unlawful and liable to be quashed.
- 1.19** The Council considered that it was appropriate to serve an Enforcement Notice against substantially the same development as is the subject of this application. That Notice was issued in December 2015. Nothing has materially altered since the issue of the Notice. It would be capricious for the Council to reach a different

view about whether this development complies with planning policy from that reached by it when deciding to issue the Notice.

- 1.20** On the evidence submitted to date, the development clearly conflicts with a number of key policies within both the existing and emerging development plans.
- 1.21** The impacts on the AONB of the intensive farming operation on the site including the storage (and spreading) of slurry are such that it is clear that this is simply the wrong location for this operation. The herd has expanded, aided by operational development outside the planning system (the Barn as built and used, the Concrete Lagoon and the Slurry Lagoon) to the point where the consequences of so many cattle on the site are not acceptable.
- 1.22** The Retrospective Application should therefore be refused and the current Enforcement Notice, whereby the Slurry Lagoon is to be decommissioned by 30 September 2017, should be enforced.
- 1.23** The Environment Agency would then be in a position to use its powers under the SSAFO regulations to require the herd to be reduced to a level commensurate with the facilities available on the site.
- 1.24** Refusal of the application will have an impact on the profitability of the farm, which is regrettable, but the fact that the operation at its current level requires unacceptable developments in order to facilitate it means that the current level of operation is unsustainable in this location.
- 1.25** *In summary, the herd should not have been increased to 1000, in the heart of an AONB, without proper consultation, without appropriate planning permissions and without regard to its effect on the community and environment of Hartland. It is a wholly inappropriate location for an intensive dairy farming operation. The Retrospective Application should be refused for the many reasons outlined below.*

2 Errors and Omissions in the Retrospective Application

2.1 Tacit permission

- 2.2** The Design and Access Statement supporting the Retrospective Application states in §2.8: “Historically, planning permission has been granted for additional cattle housing at the farm, which has resulted in the current level of livestock being present on site.”
- 2.3** It further states in §2.14: “Before the current lagoon was constructed, the existing farm did not have sufficient facilities to meet the requirements of the 1,000 cow herd which is present on site through the previous expansion plans permitted by the Local Authority.”
- 2.4** These two statements suggest that the current herd size is a direct consequence of permissions previously granted by the Council. *This is incorrect. A review of the planning history of the site reveals that the Council has never granted planning permission for an intensive dairy farm operation at Beckland Farm nor for facilities required to support a herd size of 1,000 cows.*
- 2.5** In the particular case of the Barn that houses much of the herd at Beckland Farm, permission was granted in Nov 2008 for a much smaller barn than is now present on the site. The Nov 2008 Application included a Design and Access Statement which stated that the Barn would have a floor area of 59.6m x 42.2m = 2,515 sq m and that it was needed to facilitate the relocation of 100 dry cows that formed part of the herd at Beckland Farm but were then located at another farm and for general storage purposes. The Barn actually built is a significantly different building (with an entirely different use) from that for which planning permission was obtained.
- 2.6** One of the two principal reasons relied on by the applicant to justify the development was that the construction of the Barn would reduce the volume of traffic to and from Beckland Farm. The following specific representations were made:
1. use of the Barn would not generate additional traffic to and from the public highway; and
 2. the existing dirty water system was adequate to manage all slurry and dirty water produced when using the Barn.
- 2.7** The Barn that was built was not the one for which planning permission was sought and granted. The Barn built is: 85m x 45m = 3825 sq m which is 50% bigger than the one authorised and it has not been used for

the purpose for which permission was granted. Instead it has been used for an “intensive farming” operation and houses a substantial indoor dairy herd. Had its intended use been openly declared at the time of the Application it would have been a *Schedule 2 Development under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, s.2.1a and s.2.1c and because the development is in a sensitive area it would have required an EIA screening by the Council.*

- 2.8** The Council therefore could not have known that the current herd size was a possible outcome of any permission granted in 2008. The traffic and slurry storage impacts of the ‘as built’ Barn far exceed those of the Barn as assessed by the Council in granting the 2008 Permission. There has been no subsequent grant of permission for any larger barn on the site.
- 2.9** *Therefore there was no implied permission or support for the expansion of the herd at Beckland Farm as a result of previous permissions granted by the Council nor any reason for the applicant to assume this to be the case. Consequently there existed no reason for the applicant to believe that the construction of the Slurry Lagoon would be granted retrospective planning permission.*
- 2.10 The Planning Permission Granted In November 2008 – A Flawed Process**
- 2.11** Planning permission for the construction of the Barn that houses the majority of the herd at Beckland was granted in Nov 2008 following a planning application granted on the basis of incorrect information and representations. It is believed that the Council should, as a matter of priority, now investigate whether there was “deception in the planning process intended to undermine its regular operation” sufficient to prevent the applicant avoiding relying on the 4-year rule to prevent enforcement action being taken by the Council to remove the developments that are not in accordance with the Nov 2008 Application.
- 2.12** The Barn was built in approximately January 2009. Residents started to experience problems with the spreading of slurry in late 2009 early 2010. This is consistent with the development of an intensive dairy farming operation of 1,000 cows at Beckland Farm immediately after the completion of the Barn.
- 2.13** During the course of 2009 as the herd was increased without sufficient available slurry and silage storage capacity there were two Category 2 pollution incidents at the farm recorded by the Environment Agency, followed by further incidents in Jan and Feb 2010 (see Appendix C) which is consistent with the development of the intensive dairy farming operation of 1,000 cows at Beckland Farm immediately after the completion of the Barn.
- 2.14** The Barn that houses much of the herd on the site and facilitates the intensive farming operation is 50% bigger than the permission granted and has clearly never been used for the purpose for which permission was granted.
- 2.15** Had the size and purpose of the Barn been openly declared in the application (1/1004/2008/FUL) then, as previously observed, it would have been a Schedule 2 development as required by the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, Schedule 2 s.2.1a and s.2.1c and would have required an EIA screening.
- 2.16** Also, as the site is located in a sensitive area, namely in the heart of an AONB and close to the Tintagel -Marsland - Clovelly SAC and designated SSSIs, it is considered likely that an EIA would have been required.
- 2.17** Many serious adverse consequences have arisen as a result of this misleading application. Natural England has identified that one of those consequences is the significant adverse impact on the Tintagel Marsland Clovelly Coast SAC due to high emissions from the associated livestock buildings (the Barn) adding significantly to background levels of ammonia, nitrogen and acid deposition which exceed the target critical loads/levels at the SAC.
- 2.18** Given:
1. the construction of the Barn 50% larger than the building for which planning permission was granted;
 2. the immediate use of the Barn following construction as an “intensive farming” operation rather than for the purposes expressed in the Application;
 3. the construction of the Concrete Slurry Lagoon without planning permission;
 4. the misrepresentation contained in the Application that use of the Barn would not generate additional traffic to and from the public highway;
 5. the misrepresentation contained in the Application that the existing dirty water system was adequate to manage all slurry and dirty water produced when using the Barn; and

6. that the applicant was fully aware that a planning application to construct a barn of the size actually built and to use it for the purposes of an intensive dairy farming operation would be likely to be refused for all the reasons which are now canvassed in connection with the retrospective planning application for the Slurry Lagoon;
7. *the Council should, as a matter of priority, now investigate whether there was “deception in the planning process” leading to the Nov 2008 Application “which was intended to undermine its regular operation”.*

- 2.19** In the case of the Concrete Lagoon, it is believed that it was doubled in size to its current size of 1550 m² when the Barn was built. This would not have been a Permitted Development [ref 23] and there should have been a planning application submitted prior to its development as part of the intended intensive farming operation.
- 2.20** The lack of any planning application associated with the development of the Concrete Lagoon means that the construction of the Concrete Lagoon is likely to be considered by the courts to be part of the same development as the Barn and that it too can properly be the subject of an enforcement notice.
- 2.21** The Council will only recently have become aware of the possibility that these developments may be considered to be unlawful as it clearly did not connect the problems caused by the activities at Beckland Farm with the application for the Barn or the construction of the Concrete Slurry Lagoon. In any event the Council will now recognise the need to protect the public interest given the seriousness of this case.
- 2.22** In the circumstances, it would be appropriate for the Council to rely on the provisions of The Town and Country Planning Act s.171BA to s.171BC (as amended) and it should apply to the court for an order to require either the removal of these developments or the submission of retrospective applications for planning permission.
- 2.23** In the meantime it is considered that these developments remain unlawful and cannot be used as a baseline for the purposes of the HRA (see section 4).
- 2.24 Change of Use**
- 2.25** Notwithstanding the “flawed process” detailed above, it is clear that there has been a significant and material “change of use” of the Barn since permission was granted in Nov 2008.
- 2.26** This material change of use has had serious consequences. The impacts on the AONB of the intensive farming operation at Beckland Farm have been extensively documented by Natural England, UNESCO Biosphere, AONB and the National Trust in their responses to the Retrospective Application 1/1041/2015/FULM. The herd has expanded, enabled by operational development outside the panning system (the Barn, the Concrete Slurry Lagoon and the earth banked Slurry Lagoon) to the point where the consequences arising from so many cows on the site are not acceptable.
- 2.27** It is considered that the Council should therefore exercise its powers in the public interest to require an application for the change of use of the Barn under the 10 year rule and in the meantime it would be reasonable and proper to regard the Barn as an unlawful development in its consideration of the Retrospective Application and all other applications.
- 2.28 Ammonia Impact Assessment**
- 2.29** The Design and Access Statement says in §2.18, “... consideration also needs to be given to the way in which the manure/slurry generated by the existing herd is distributed to agricultural land”.
- 2.30** However, the Ammonia Impact Assessment makes no attempt at an assessment of the impact of Ammonia resulting from the spreading of the contents of the Slurry Lagoon across the Hartland AONB. This is a gross omission as this is the source of much of the ammonia released as a direct consequence of the presence of the Slurry Lagoon and many of the fields are very close to sensitive and vulnerable areas (SACs and SSSIs).
- 2.31** A member of the public has noted that the intensive farming operation at this site has resulted in slurry spreading operations in January 2017 within 3 meters of the SAC in fields just north-west of the Slurry Lagoon.
- 2.32 Transport Assessment**

- 2.33** The traffic associated with the operation of the Slurry Lagoon is an important consideration. When considering the application for the large slurry lagoon at the applicant's Sedborough Farm site the Council gave considerable weight to the likely impact of slurry tanker traffic and it would therefore be inconsistent not to do so in this case.
- 2.34** The Transport Assessment (TA) assumes a tanker contains 18.21 m³ (4000 gallons) and based on an expected slurry output of 51,000 m³ it predicts a minimum 5600 tanker movements from Beckland Farm per annum.
- 2.35** However, TA §3.2.1 seeks to suggest that a larger lagoon will have a positive effect on this number. This is clearly misleading and wrong. There will be 5600 tanker movements whatever the size of the lagoon. All a slurry lagoon provides is a reservoir for the slurry produced and has no impact on slurry volumes without a parallel increase in the size of the herd.
- 2.36** It also states in TA §3.3.11 that "Slurry is spread from 1st February to 15th October, a total of 257 days". *This is not correct. The Council will be aware that residents have recorded slurry being spread in November, December and January.* It is therefore a year-round operation, despite the existence of the earth-banked Slurry Lagoon.
- 2.37** The Traffic Assessment fails to even mention the traffic associated with the movement of milk, feedstuffs, sand, staff etc. which results in many 1000's of traffic movements a year from Beckland Farm. The tanker traffic is in addition to these movements. All of this traffic needs to be considered because it is a direct consequence of the continued operation of the Slurry Lagoon. Without the Slurry Lagoon the traffic would be greatly reduced because the applicant would be required to operate within the SSAFO regulations and reduce the size of the herd at Beckland Farm.
- 2.38** Furthermore, where the slurry is used on grassland to produce silage there is further related traffic, which can result in 100's of trailer movements. The application makes no estimate of this traffic, which is a direct consequence of the slurry traffic and needs to be taken into account.
- 2.39** The Code 7 Habitats Regulation Assessment report states: "All transport is within site and no additional external transport is anticipated". *This is incorrect.* It therefore takes no account of the pollution caused by the transportation or indeed the spreading of slurry. *The report is considered to be inaccurate and should not be relied upon.*
- 2.40 The Slurry Lagoon Cover**
- 2.41** Apart from a reference to a cover on the slurry lagoon in the Design and Access Statement and one in the Slurry and Dirty Water Storage Requirements (SADWS) report there are no details provided about the cover. This is an important omission, since the nature and management of the cover will have a significant effect on emissions from the Slurry Lagoon and on its visual impact. This has been pointed out by the National Trust in their response.
- 2.42** The existing earth-banked Slurry Lagoon is not designed to take a cover and would require significant works to adapt it to take a cover. The result of these works are considered likely to increase the visual impact as has been the case at the applicant's Sedborough site.
- 2.43** The Visual Impact Assessment takes no account of the proposed cover, which is likely to be highly visible and intrusive and may be the most prominent visual aspect of the Slurry Lagoon. The cover may not be visible from some directions depending on the nature of the cover, however the management of such a large cover will result in equipment and other paraphernalia that will be highly visible around or near the bund as evidenced by the large slurry lagoon on the applicant's Sedborough site. *The assessment therefore does not measure the visual impact of the Slurry Lagoon in a way that is useful for the determination of this application.*
- 2.44** The application fails to address the fact that slurry stored under a cover will necessarily contain higher levels of nitrogen that are then released during spreading as Ammonia and Nitrous Oxide [ref 19]. This means that the problem of damaging emissions from the Slurry Lagoon is not solved by the cover but simply displaced to the fields where the slurry is spread. It is evident from the many pollution reports and reports from residents of odour that the expedience of shallow injection when spreading is not sufficient mitigation. Also, injection is not possible where the slurry contains sand and side-spreaders are used (see section 4).

2.45 Slurry Management Plan

- 2.46** The Slurry and Dirty Water Storage (SADWS) report includes a risk map in which 12% of the field area considered is categorised as Red (or No Spread), leaving 461 ha of the original 519 ha that may be used for spreading. This is a significant underestimate of the area of land with the original 519 ha that is unsuitable for spreading or less than ideal.
- 2.47** It takes no account of the fact that, by its own estimate, 34.38 ha of the land is in the category of Very High Risk. This 34.38 ha comprises 7.5% of the total land available for spreading. This land should not be given equal weight when coming to an overall and realistic measure of available land.
- 2.48** Similarly, it takes no account of the fact that, by its own estimate, 58.12 ha of the land is in the category of "High Risk". This 58.12 ha comprises 12.6% of the total land available for spreading.
- 2.49** To determine the real area available land for spreading it is necessary to consider the probability that the criteria for each risk category, whereby spreading is acceptable, may be satisfied. A very generous formula to the applicant would be: Available Area = Green Area x 1.0 + Yellow Area x 0.75 + Orange Area x 0.5
This yields a more realistic available area of 433.96 ha = (373.18 x 1.0) + (58.12 x 0.75) + (34.38 x 0.5) ha
- 2.50** Even this risk-adjusted figure for the available area would be a substantial overestimate of the land available for spreading because the risk factors allocated to fields by the applicant's advisors are incorrect. Of particular note are the fields around Markadon. These are steeply sloping (the profile of these fields has been quantified using LIDAR data and is described in detail in a letter to TDC dated 16 Dec 2015).
- 2.51** In addition the SADWS states on page 6: "Please note the calculation of this figure does not include any N deposited by grazing livestock, and on this site the dairy cattle are not currently grazed ...". This is misleading as sheep are regularly grazed on many of the fields and which contribute significantly to the N loading, and so reduces the effective available area discussed above still further. It also does not take account of the fact that although "dairy cattle are not currently grazed" the land owners may decide to graze dairy cattle on that land in the future. A permanent facility is being incorrectly justified by reference to temporary conditions.
- 2.52** Of the fields cited in the Slurry Management Plan, 15% are on-farm and 85% are off-farm. *Over 80% are not owned by the applicant.* The plan assumes that such land can be relied on and will be a permanent facility. This is incorrect and is misleading. The reality is that at any time such land can be made unavailable by its owner because of a change of priorities by the landowner or, indeed, a dispute arising in a commercial relationship with the applicant. This land cannot be used to support an application for the construction of a permanent facility because its availability is inherently temporary. The removal of land previously leased to the applicant by the National Trust provides an example of the inherently temporary nature of the applicant's relationship with other landowners, as does the recent removal of land leased from the Christie Estate at Tapeley Park.
- 2.53** *Given the underestimate of land required in combination with the temporary and unreliable nature of the off-farm arrangements, the Slurry Management Plan is materially flawed. Similar concerns have been expressed by Natural England, AONB and UNESCO Biosphere.*
- 2.54** **Odour Management Plan**
- 2.55** As detailed in section 4 below, *the Odour Management Plan has many errors and omissions and should not be relied upon.*

3 Planning History

3.1 Intentional Unauthorised Development

3.2 On 17 December 2015 Brandon Lewis MP on behalf of the Department for Communities and Local Government issued a Written Ministerial Statement ("WMS") on "Green Belt Protection and unauthorised development" which states as follows: "this statement introduces a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. This policy applies to *all new planning applications* and appeals received from 31 August 2015".

3.3 The applicant will, or ought to have been aware that planning permission was required to build a slurry lagoon of over 1 hectare having built a similar large lagoon at Sedborough Farm without authorisation in 2008 (1/1110/2010/FULM).

- 3.4** He will also have been aware of the need for the Slurry Lagoon at Beckland long before the Environment Agency required that he increase the slurry storage facilities at the end of 2011. The SSAFO regulations are unambiguous and the applicant can be assumed to be familiar with them; in any event, he is professionally advised. But in addition the EA had also advised him of this need in Jan 2010 as the result of which he had submitted a planning application for a 70m x 70m slurry lagoon in July 2011.
- 3.5** It is not sufficient to claim that the EA required the Slurry Lagoon to be built. SSAFO required that the Slurry Lagoon to be built *prior to its need arising*, which the applicant would have known. The EA's advice is limited to advice that the SSAFO requirements for a herd of the size then kept at Beckland Farm required additional slurry storage capacity. The EA's advice did not deal with the issue of the legality of pre-existing developments at Beckland Farm nor the application of the relevant planning regulations.
- 3.6** It is therefore an "intentional unauthorised development" falling squarely within the terms of the WMS.
- 3.7** Whilst it is accepted that the WMS was particularly concerned with the protection of the Green Belt, it is also clear that it creates a separate policy whereby the applicant's previous intentional breach of planning control is deemed to be a material consideration. It is considered that the WMS was issued by central government to address exactly the kind of abuse of planning control epitomised by the planning history associated with this development (see Appendix B).

4 Environment

4.1 Habitat Regulations Assessment (HRA)

- 4.2** The HRA was produced in Sept 2016 in consultation with Natural England (NE) and other agencies. This has since been challenged in a letter from a solicitor (Freeths) acting for the applicant to which NE have responded by reiterating its previously stated concerns and objections after taking advice.
- 4.3** Freeths argue in their letter that the 'baseline' should include the Concrete Lagoon. However, it is well established that a baseline employed in an HRA must be a lawful development. As noted above, planning permission for the construction of the Barn that houses the majority of the 1,000 cows was granted in Nov 2008 following a planning application granted on the basis of incorrect information and representations (see para. 2.10 above). It is believed that the construction of the Barn and its present use as an intensive farming operation must therefore be disregarded when determining the baseline as must the construction of the Concrete Slurry Lagoon.
- 4.4** The original HRA written by TDC under the advice and guidance of Natural England and other agencies should therefore be considered to be a correct assessment as required by the Habitats Directive.

4.5 NPPF Section 11 - Conserving and enhancing the natural environment

- 4.6** It is the duty of the Council to protect the environment as directed by the National Planning Policy Framework (NPPF). Of particular note is most of section 11, which places a responsibility on an LPA to protect and enhance the environment.
- 4.7** Beckland Farm is in an AONB, as are most of the fields on which slurry will be spread (ie those North of the A39). The farm *and many of the on-farm and off-farm fields used to spread slurry* are very close to the Tintagel – Marsland – Clovelly SAC and also close to designated SSSIs.
- 4.8** Paragraph 116 of the NPPF is explicit about how an LPA should deal with a major application in such an area:
 "Planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of:
- the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
 - the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and
 - any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated."

- 4.9** The definition of “major” in the context of 116 of NPPF has been reviewed by James Maurici QC in an Opinion for South Downs National Park Authority [ref 24]. In paragraphs 24 – 29 he lays out 6 criteria for determining whether a development is “Major”.
- 4.10** *As previously mentioned, it is considered that the development of the Slurry Lagoon (which is over 1 hectare) is a Schedule 2 development as it fulfils the criteria of section 2.1a. being a fundamental part of an “intensive farming” operational development undertaken on uncultivated land in excess of 0.5 hectares and may also satisfy section 11c being a waste water reservoir of over 1 hectare. Given the environmental sensitivity of the location it is considered incumbent upon the Council to screen the application to determine the need for an Environmental Impact Assessment.*
- 4.11** Adverse potential impacts on the environment have been detailed in responses from the AONB, Natural England, UNESCO Biosphere and the National Trust, as well as the experiences of residents that the Council will be aware of.
- 4.12** In consideration of this large development of over 1 hectare being in a designated sensitive area, close to a SAC and SSSI's and likely to be a Schedule 2 development and that in the opinion of many of the Council's statutory consultees there is the potential for environmental damage it is evident that this development should be classified as Major according to the criteria laid out by James Maurici QC.
- 4.13** It follows that as a Major development there needs to be exceptional reasons to allow it. There are no such exceptional circumstances in this case. There is no national need for an operation of this scale at this location. Also, there is no overriding benefit to the local economy (see section 5), in fact there is considerable concern that the local economy will suffer.
- 4.14 National Need**
- 4.15** It is for the applicant to establish that a herd of 1,000 cows at this location and the consequential need for a major development (the Slurry Lagoon) fulfils a national or local need. The applicant has not provided any justification that addresses a need for this development at this location within an AONB.
- 4.16 Pollution**
- 4.17** Beckland Farm has been owned by the applicant for over 10 years. Since April 2006 there have been 56 pollution incidents recorded by the Environment Agency at the farm. Of these, 17 have been classified as “Category 2 – Significant”. See Appendix C.
- 4.18** The latest Category 2 incident was as recent as September 2016. This involved the spreading of sand-rich slurry using a side-spreader on saturated ground while it was raining (see Appendix F)
- 4.19** The Abbey River, as reported in the UNESCO Biosphere response, has elevated levels of Phosphorous. This is considered to be a direct result of the slurry from Beckland being spread on steeply sloping fields close to the river. At present, the Abbey River is assessed by the Environment Agency as having Moderate Water Quality, which is classified as an EU Water Framework Directive failure.
- 4.20** Many of these pollution incidents serve to demonstrate the failure of the SADWS report to properly take into account the risks of spreading 11,200,000 gallons of slurry per annum and also demonstrate the impact of having this scale of operation in such a sensitive location.
- 4.21** Also, as noted above, the application fails to address the fact that slurry stored under a cover will necessarily contain higher levels of nitrogen that are then released during spreading as Ammonia and Nitrous Oxide [ref 19]. *This means that the problem of damaging emissions from the slurry lagoon is not solved by the cover but simply displaced to the fields where the expected 11,200,000 gallons of slurry is spread many of which abut the SAC and SSSIs (see also next sub-section).*
- 4.22 Air Quality – Odour**
- 4.23** Slurry has a very unpleasant smell. It is not the "country smell" that is familiar and which is largely benign. The unpleasant odours from slurry are a result of the complex anaerobic decomposition processes that take place in the slurry store which produce hundreds of compounds. Volatile fatty acids are the most important group and are regarded as being the main cause of the offensive odours from slurry. To a lesser extent sulphur-containing compounds, which are derived from amino acids in urine, also play a role. An example would be Hydrogen Sulphide (the rotten egg smell). Volatile amines can also contribute.

- 4.24** When slurry is spread, it is the presence of this wide range of malodorous compounds that causes the unpleasant smell.
- 4.25** Injecting the slurry does not reduce the odour by any significant degree due to the volumes being spread. Properly managed injection can reduce odour by up to 70%, but this is not guaranteed and will be largely ineffective when slurry over-spills the injection trench as is mostly the case. Furthermore, the sand-rich slurry cannot be injected and is spread using a side-spreader which produce a plume of slurry spray (see Appendix F). Where the slurry has a large concentration of volatile odorous compounds some odour may persist for a week or more after spreading.
- 4.26** The consequence of spreading 11,200,000 gallons of slurry around Hartland has been to subject residents and businesses in the area to a constantly repeated odour nuisance.
- Residents need to keep doors and windows shut and washing cannot be hung out.
 - Businesses, like Hartland Abbey, that attract 10,000's of visitors to the area, have reported people being driven away by the odour when slurry is being spread. Many holiday lets report complaints from visitors and loss of repeat business.
- 4.27** The odour nuisance causes a real loss of amenity to the residents on the Hartland Peninsula.
- 4.28** The Odour Management Plan states in Table 3.2 "Slurry will be removed from the lagoon via a pumping system and sealed pipework associated with land spreading via umbilical injection". *This statement is incorrect.*
- 4.29** This could only apply to the on-farm fields at Beckland, which only represent 15% of the fields used for spreading slurry. The plan takes no account of the other 85% which are off-farm and require the transporting of slurry an average of 2.6 miles (see Appendix G) with all the attendant odour related issues described above.
- 4.30** The Design and Access Statement says in §3.5 "It should be noted that as part of the current proposals, the central slurry compound would be removed from the farm complex in order to reduce ammonia emissions and would be replaced with the installation of a sand separator system."
- 4.31** A sand separator would reduce the need for side-spreading and the installation and its operation would need to be a planning obligation or condition on any permission granted (see section 6).
- 4.32** *However, the Odour Management Plan bears little resemblance to reality and is seriously flawed and should not be relied upon in the determination of this application.*
- 4.33 Air Quality – Public Health**
- 4.34** The Council will be aware that many residents of Hartland have complained of headaches, chest tightness, breathlessness, watering eyes, nausea and other symptoms immediately after slurry has been spread.
- 4.35** These symptoms once experienced are often not transient but can persist for several weeks after exposure to the slurry's air-borne pollutants.
- 4.36** A study conducted in Holland and published in June 2016 [ref 6] has shown there to be a strong correlation between reduced lung function and ammonia from slurry. In an email from one of the lead authors, Dr Lidwien Smit says: "The new research addressed objectively measured lung function in 2500 adults, and we found that lung function was lower (worse) when ammonia concentrations in the air were higher. As you know, ammonia is released from manure and there are hardly other sources in the area (studied)".
- 4.37** A local GP in Hartland has commented on the elevated levels of respiratory problems in the area and has been in touch with Public Health England.
- 4.38** We have received numerous emails that provide a considerable amount of anecdotal evidence from other areas of the country.
- 4.39** It is already recognised by central government that Ammonia can be a threat to public health as indicated by DEFRA's Guide to Farming Ammonia Reduction Grant Scheme which states: "Ammonia is a key air pollutant that can have significant effects on human health and on ecosystems."

- 4.40** Slurry is not manure and will contain a range of compounds due to its nature. These compounds can react with the environment producing highly dangerous emissions including but not limited to: Ammonia and Hydrogen Sulphide.
- 4.41** Ammonia emissions from slurry during spreading can react with oxides of nitrogen and sulphur to form very fine particles that can then be carried great distances by the wind. These particles can be 2.5 microns or less in diameter (known as PM2.5). The small size of the particles allows them to penetrate deep into the lungs and there is evidence that prolonged exposure to these particles can cause significant respiratory and cardiovascular problems.
- 4.42** Dairy slurry can contain Escherichia Coli O157:H7, Salmonella, Cryptosporidium, Campylobacter and other pathogens. The survival of these organisms during storage and then subsequently after spreading is not well understood and is the subject of a great deal of research. However, there is evidence that in the right conditions (pH levels, temperature, UV exposure, etc) they can survive for considerable periods and infect watercourses, rivers and estuaries. There is also evidence for air-borne infection 100's of meters downwind of fields spread with slurry.
- 4.43** Antibiotic-resistant bacteria are becoming a serious global threat to public health. One of the sources of these bacteria is agriculture and in particular the use of slurry. Slurry is not subject to the heating of an aerobic composting process and there is a lot of evidence that shows that antibiotics used to manage the health of the cows will end up in the slurry. This is then spread on land where it can affect the microbial content of the soil, which can include the pathogens described above. If these pathogens then infect watercourses, they can become a serious threat to public health.
- 4.44** Slurry is a complex and potentially dangerous by-product of a factory-based process and as such is an industrial waste.
- 4.45** The Interdepartmental Liaison Group on Risk Assessment (ILGRA), in its 2002 paper The Precautionary Principle: Policy and Application [ref 18] states:
- The purpose of the precautionary principle is to create an impetus to take a decision notwithstanding scientific uncertainty about the nature and extent of the risk.
 - The precautionary principle should be invoked when:
 - there is good reason to believe that harmful effects may occur to human, animal or plant health or to the environment; and
 - the level of scientific uncertainty about the consequences or likelihood of the risk is such that the best available scientific advice cannot assess the risk with sufficient confidence to inform decision-making.
- 4.46** So, where there exists limited but unequivocal evidence that a waste product may be causing health problems, as is the case in this instance, then the precautionary principle should apply.
- 4.47** To allow the continued dumping of approximately 11,200,000 gallons of industrial waste from just one farm, in an AONB that attracts a great number of visitors (see section 5), is not consistent with the exercise of the precautionary principle. See also, Appendix I.
- 4.48** *An LPA has a duty to protect public health as required by the Public Health (Control of Disease) Act 1984, as amended by the Health and Social Care Act 2008, and Health and Safety at Work Act 1974, Food Safety Act 1990 and other legislation. This slurry lagoon due to its size and location facilitates an activity that is demonstrably a threat to public health and should not be given planning permission.*

5 Economy

- 5.1** The North Devon area attracts over two million visitors per year [ref 22] due to its unique landscape and tranquillity that is reflected in much of the area's Area of Outstanding Natural Beauty (AONB) status.
- 5.2** In the 2012 economic profile for the Torridge District, Tourism (Accommodation and Food) accounted for 9% of the area's revenues, while Agriculture accounted for 1% [ref 10].
- 5.3** The importance of tourism to the economy of Hartland, an AONB, is therefore unequivocal.
- 5.4** This application concerns an unauthorised development in the heart of an AONB and which facilitates an operation that adversely affects many of the area's unique attractions and qualities.

- 5.5** Given the odour and tanker traffic issues, plus local environmental damage, there has already been serious damage to tourism as a direct consequence of the spreading of slurry from Beckland Farm. This has been reported by many holiday cottage businesses, Hartland Abbey and others.
- 5.6** Parkham Farms employs about 40 people. Most of these are at the Cheese Factory at Higher Alminstone near Woolsery. We have estimated that Beckland Farm only employs 6 people *on average*, as workers will be expected to help out at the other farms owned by the applicant as need dictates.
- 5.7** Any suggestion that a farm of this size is bringing employment to the area is therefore wrong. 10 farms of 100 cows or even 5 farms of 200 cows would clearly provide more employment, both directly and through any support services.
- 5.8** *In conclusion, the operation of Beckland Farm, facilitated by the unauthorised lagoon, is an undoubted and real threat to the local economy and this application should therefore be refused.*

6 Planning Policy Conformance

6.1 Mitigation and Conditions

- 6.2** Paragraph 206 of the NPPF– makes it clear that a condition must be enforceable and it must be necessary in order to make the development acceptable in planning terms.
- 6.3** Where adding a condition would serve to mitigate the failure of a policy test the Council should consider if it would be willing or indeed able to enforce the condition. If the Council feels it is likely to regard the enforcement of any condition associated with this application's permission as not being expedient, as it has for many of the conditions on permissions granted to this applicant in the past, then there is no effective mitigation and this should mean that the Retrospective Application is refused.

6.4 Enforcement Notice

- 6.5** An Enforcement Notice (14/2015) dated 14 Dec 2015 was served on the applicant which requires the removal of the lagoon. The compliance period was subsequently extended to 30 Sept 2017.
- 6.6** As this matter had not been resolved within 4 years, it is understood that the Council took this step to ensure that the "4 year rule" could not be invoked.
- 6.7** However, in order to issue an Enforcement Notice, the Council must have proper grounds.
- 6.8** The Council states in the EN that the development is contrary to the following Development Plan policies: DVT2C, DVT11, DVT18, ECD5, ENV1, ENV5, ENV6, ENV7, ENV10, NPPF, WACA, NERC and it goes on to state that: "The Council consider that planning permission should not be given, because planning conditions could not overcome these objections to the development."
- 6.9** The Enforcement Notice was issued over a month after the application was validated on 2 Nov 2015 and hence the Council will have been aware of the arguments presented by the applicant in support of the application. Since then there has been no correspondence from the applicant or his agents posted against the application to add weight to these arguments. The Council will have also received many of the statutory consultee's responses by 14 Dec 2015. The only outstanding matter was the Habitat's Regulation Assessment (HRA).
- 6.10** *The policy background at the time of issuing the Notice has not changed. It is considered that the Council's stated reasons for issuing the Notice remain valid reasons for refusing the application. In particular, no new matters going to compliance with the development plan (as opposed to the Habitats Directive) have been raised since the Notice was issued. There is therefore no proper basis for the Council to reach a different view on this application than it reached in considering the issue of the Notice to be expedient.*

6.11 Relevant Policies

- 6.12** The following lists the planning policies that are relevant to this application.
TDLP2004 means "Torridge District Local Plan 2004"

NPPF means “National Planning Policy Framework”

WACA means “Wildlife and Countryside Act 1981”

NERC means “Natural Environment & Rural Communities Act 2006”

Plan / Instrument	Policy	Title
TDLP2004	DVT2C	Development in the Open Countryside
TDLP2004	DVT11	Impact of Development on Amenity
TDLP2004	DVT18	Impact of Development on Traffic
TDLP2004	ECD5	Agricultural Development
TDLP2004	ENV1	Conservation Interest
TDLP2004	ENV5	Countryside Protection and Landscape Conservation
TDLP2004	ENV6	Designated Landscape Areas
TDLP2004	ENV7	Protection of Important Nature Conservation Interests
TDLP2004	ENV10	Mitigation and Enhancement
NPPF	NPPF	Chapter 11 section 118
WACA	WACA	
NERC	NERC	

6.13 The new Local Plan should also be considered. This has been submitted to the Secretary of State and the Examination opened towards the end of last year. It may be that the Council now knows when it expects the Inspector’s report. In any event, it is now at an advanced stage and consideration may be given to the policies in the emerging plan as described in NPPF – Annex 1.

6.14 TDC Local Plan 2004: DVT2C - Development in the Open Countryside

This policy states in §3.51A: “The aim is to protect the character and appearance of the countryside while allowing for sustainable economic activity” and in §3.51B: “In the open countryside outside the rural settlements, development should be controlled strictly, in accord with the Structure Plan. A positive policy is needed for economic activity that respects the countryside.”

DVT2C(1): “In the countryside away from the villages development should not detract from the character and appearance of the area.”

6.15 Policy test failures

The lagoon is a development in excess of 1 hectare in size and is visible from the coastal path and other areas as pointed out by the National Trust in their response. The area is an AONB. The construction has lines that jar with the rolling nature of the surrounding landscape and is, because of its size, intrusive. The Visual Impact Statement takes no account of the cover and any planting scheme would take many years.

6.16 The key word here is ‘sustainable’. Sustainability is not explicitly defined by the NPPF; the document as a whole constitutes the definition and provides criteria for measuring the economic, social and environmental benefits; which are the three key components of sustainability. This application fails on every count:

Economic: see section 5
 Social: see section 4
 Environmental: see section 4

6.17 Possible mitigation

There are no measures or conditions that could address the many problems affecting the sustainability of the operation facilitated by the slurry lagoon.

6.18 TDC Local Plan 2004: DVT11 - Impact of Development on Amenity

Development will be required to secure or maintain amenity appropriate to the locality, with special regard to the likely impact on:

- (a) neighbours and the operation of neighbouring uses; and
- (b) future occupiers and visitors to the site; and
- (c) necessary infrastructure and local services.

6.19 Policy test failures

The impact on amenity of traffic, odour and supporting infrastructure such as damage to lanes and verges are substantial and disruptive.

Residents have reported extended periods when there has been tanker traffic in excess of 1 every 5 mins. This is clearly unreasonable and has a serious impact on amenity.

The odour resulting from slurry spreading is intense and means windows and doors have to be kept shut and washing cannot be hung out to air or dry as it becomes tainted. This represents a serious loss of amenity that affects both individuals and businesses. (see section 4)

6.20 Possible mitigation

Mitigation would require considerably less tanker traffic and a realist and effective Odour Management Plan.

6.21 **TDC Local Plan 2004: DVT18 - Impact of Development on Traffic**

(1) All development must take into account its impact on the highway network in terms of traffic generated, highway safety, access, servicing,

(2) Where a transport assessment indicates that significant travel and transport implications are likely, alternative transport measures shall be provided as an integral part of the scheme and such development will be permissible only where it will be accessible to a choice of alternative transport modes.

(3) Traffic management measures will be expected to enhance the environment with regard for all local transport objectives

6.22 *It is unfortunate that the Devon Highways' consultee response has based its report on a very brief experience following a delivery lorry from the A39 to Beckland Farm. This major application should merit a more thorough examination of its impact. The AONB and several residents have made numerous appeals to Devon Highways for a more thoughtful and professional assessment of the application but it has refused to discuss the matter. It is considered that Devon Highways' response is cursory and insufficient and is now the subject of an official complaint (P5729896) and should not be relied upon when determining this application.*

6.23 Policy test failures

The 5600 tanker movements, each of an average of 2.6 miles (see Appendix G), have already caused serious damage to roads and verges. The frequency and speed of the tankers do represent a safety risk to the public. While there have been no major incidents as yet there have been numerous minor incidents. The roads can get covered in slurry which leads to safety issues (skidding) and also represents a loss of amenity. Local businesses have had to advise visitors to stay away from the lanes that are used by the tankers.

Furthermore, slurry will be delivered to parts of the Stitworthy fields along the A39 from Beckland Farm. The volume of slurry delivered to these fields represents *over 60% of the slurry transported off-farm*. While not all the Stitworthy fields are accessed from the A39, it is clear there will still be a significant amount of tanker traffic on the A39. This can cause congestion and frustration which will lead to road safety issues. The tankers interfere with the flow of tourist traffic, as well as private and business road users.

6.24 Possible mitigation

The only possible mitigation is to reduce the number of tanker movements. Simply, restricting the times of the movements would increase the danger and loss of amenity at other times. *The inescapable fact is that the traffic burden is unacceptably high.*

However some benefit may result from the following conditions as a minimum requirement:

1. Traffic restrictions such that tankers can only operate between 09:00 and 17:00 Mon-Fri, would reduce but not eliminate the effect of traffic.
2. The operation of a one-way scheme such that only one tanker is allowed to be on the road at any one time would reduce frequency, help protect verges and increase safety.
3. A schedule 106 agreement to ensure verges and roads are kept clean and repaired.

It should be noted that the lagoon at the applicant's Sedborough site had a similar condition to (1) above imposed on it. This condition was entirely ignored by the applicant and it was deemed to be "unenforceable" by the Council's Enforcement Officer.

6.25 **TDC Local Plan 2004: ECD5 - Agricultural Development**

ECD5(1a) states "the scale of development is justified by the operational needs of the enterprise"

ECD5(1c) states "the development will not detract unreasonably from the amenities of the occupiers of non-agricultural accommodation in the vicinity"

ECD5(1d) states “the siting is integrated wherever practicable with the existing farmstead and well related to existing landform features”

6.26 Policy test failures

With regard to ECD5(1a) the “need” has been generated by a series of previous unlawful developments which have facilitated the increase in scale to its current operation. The present scale of operation should not therefore be used to justify further inappropriate development.

With regard to ECD5(1c) the same arguments apply as in §6.22 above.

With regard to ECD5(1d) the Visual Impact Assessment takes no account of the proposed cover and therefore there is not a reliable assessment as to whether this aspect of the policy has been satisfied. Furthermore the Council’s own Tree Officer report makes it clear that the proposed planting scheme would be difficult to establish and would be out of keeping with the landscape.

6.27 Possible mitigation

As per §6.23, plus a full technical description of the proposed cover should be supplied and a proper visual impact assessment made.

6.28 TDC Local Plan 2004: ENV1 - Conservation Interest

1. Development will be expected to effect the following:
 - a) to protect or enhance the distinctive architectural, historical, archaeological, geophysical, landscape, geological, ecological, and hydrological attributes, characteristics, and features of the area; and
 - b) to incorporate conservation and where possible enhancement measures within the overall scheme design, layout, and phasing where an appropriate assessment establishes conservation priorities; and
 - c) to maintain or where possible enhance biodiversity, the richness of wildlife habitats, and the variety of natural interest.
2. Where the benefits of development outweigh the conservation interest, built and /or natural environmental loss and disturbance shall be minimised and any mitigation measures required to offset such effects may be secured by a planning condition or by a planning obligation.

6.29 Policy test failures

1. The Slurry Lagoon plus cover is likely to have a significant detrimental impact on the visual amenity of the AONB.
2. The Habitat Regulations Assessment indicates likely ecological damage.
3. The UNESCO Biosphere and Natural England reports both indicate possible loss of biodiversity.
4. The volume of slurry spread from the Slurry Lagoon has already had considerable impact on the distinctive character, of the AONB.
5. There is no need for this development at this location and therefore the benefits, which will only accrue to the applicant and his business, cannot possibly outweigh the conservation interest in this case.

6.30 Possible mitigation

There is no effective mitigation to address these failures, see section 4 above.

6.31 TDC Local Plan 2004: ENV5 - Countryside Protection and Landscape Conservation

Development will be expected to conserve or enhance the natural and historic character, natural beauty, and amenity of the Torridge landscape on the basis of local landscape character, historical and cultural associations, and the landscape priorities defined in Schedule E. (The development is located in area 9: Tamar and Torridge Headwaters) where the priorities are:

- Management of culm grasslands, field patterns and boundaries and bankside habitats.
- Enhancement of woodlands, forestry plantations and hedgerow trees by management and new planting.
- Managed buffer zone creation along river corridor.

6.32 Policy test failures

This is addressed by the HRA and section 4 above.

6.33 Possible mitigation

None.

6.34 TDC Local Plan 2004: ENV6 - Designated Landscape Areas

1. Development that would affect an Area of Outstanding Natural Beauty will be permitted only where:
 - (a) it will not harm the landscape and scenic beauty of the designated area; or
 - (b) in the case of major development, there is a proven national public interest at stake and no alternative site outside the AONB is available.
2. In the Areas of Great Landscape Value shown on the Proposals Map, development should not detract from the particular landscape qualities and characteristics that have led to the designation of that area.
3. Within the Coastal Preservation Area as defined on the Proposals Map, development will be permitted only where there is a particular and proven need for that development to be located within the CPA, including where it supports public access and enjoyment of the coast, and where the need outweighs any harm to the unspoilt nature of the area.
4. Within the Rural Gaps as defined on the Proposals Map, development will be expected to mitigate any adverse effect on the natural appearance of the designated area or the separate identity of settlements with measures that seek to maintain or enhance the surrounding landscape.

6.35 Policy test failures

This is a major development with no proven national (or local) public interest. See section 4 above.

6.36 Possible mitigation

None.

6.37 TDC Local Plan 2004: ENV7 - Protection of Important Nature Conservation Interests

(1) Development in or around a Site of Nature Conservation Importance as identified in Schedules 3 and 4, or likely to affect such nature conservation interests, will be expected to protect and, where possible, enhance the interests for which the site is identified, with regard to the strength of protection afforded by its conservation status; accordingly:

(i) Development will not be permitted if it is likely to harm the nature conservation value of a Special Protection Area, a Special Area of Conservation, or a Ramsar site; and

(ii) Development that would be liable to harm a Site of Special Scientific Interest will be permitted only if it can be subject to conditions that will prevent damaging impacts on wildlife habitats or important physical features, or if other material considerations are sufficient to override nature conservation considerations; and

(iii) Development that would be liable to harm the nature conservation value of a site of local conservation interest will be permitted only if the importance of the development outweighs the local value of the site.

(2) Where development is proposed and the conservation interest potentially is of at least local importance, a conservation assessment will be sought.

6.38 Policy test failures

This is addressed by the HRA and section 4 above

6.39 Possible mitigation

None. The provision of a cover is insufficient and serves only to displace the problem of emissions to the surrounding fields as discussed in section 4 above.

6.40 TDC Local Plan 2004: ENV10 - Mitigation and Enhancement

(1) Measures required to mitigate the adverse impact of development that affects an important nature conservation interest shall:

(a) provide adequately for habitat and species mitigation at a level and in a manner consistent with the loss or disturbance; and

(b) conserve important features in situ where practicable.

(2) Mitigation and enhancement measures will be negotiated and agreed on the basis of:

(a) the levels of habitat and species protection that apply by virtue of site status and statutory protection;
and

(b) the local biodiversity characteristics and conservation objectives for the area.

6.41 Policy test failures

This is addressed by the HRA and section 4 above

6.42 Possible mitigation

None that could reliably be expected to be effective in the presence of 11,200,000 gallons of slurry per annum.

6.43 National Planning Policy Framework (NPPF) - Chapter 11 section 118

“proposed development on land within or outside a Site of Special Scientific Interest likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site’s notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of Sites of Special Scientific Interest”

6.44 Policy test failures

The Marshland to Clovelly coast SSSI is located just 0.5km north of the site. Natural England have made it clear in its response that “The application, as submitted, has the potential to damage or destroy the interest features for which the Marsland to Clovelly Coast SSSI has been notified”.

Both UNESCO Biosphere and the AONB have expressed concern about the vulnerability and potential damage to the SSSI from this development.

6.45 Possible mitigation

None that could reliably be expected to protect the SSSI.

7 Conclusion

7.1 This application should be refused for the following reasons:

7.2 The application fails the following policy tests, as described in detail in section 6 above:

Plan / Instrument	Policy	Title
TDLP2004	DVT2C	Development in the Open Countryside
TDLP2004	DVT11	Impact of Development on Amenity
TDLP2004	DVT18	Impact of Development on Traffic
TDLP2004	ECD5	Agricultural Development
TDLP2004	ENV1	Conservation Interest
TDLP2004	ENV5	Countryside Protection and Landscape Conservation
TDLP2004	ENV6	Designated Landscape Areas
TDLP2004	ENV7	Protection of Important Nature Conservation Interests
TDLP2004	ENV10	Mitigation and Enhancement
NPPF	NPPF	Chapter 11

7.3 *The only realistic mitigation is the removal of the Slurry Lagoon (see Appendix I – Outcomes).*

7.4 Notwithstanding the enumerated policy reasons for refusal of this application the Council should consider this development to be a Major NPPF Section 116 development and refuse it as there are no exceptional reasons to allow it within an AONB and so close to a SAC and SSSIs.

7.5 The Council, as a matter of priority, should now investigate whether there was “deception in the planning process” leading to the grant of the planning permission for the Barn in November 2008 “intended to undermine its regular operation”.

7.6 Signatories

The undersigned have asked for their names to be added to this document as they support the arguments and objectives it lays out and they jointly and severally urge the Council to refuse the Retrospective Application.

Name	Address
Sir Hugh Stucley BT	Hartland Abbey, Hartland, Devon EX39 6DT
John McKay	Dyers Cottage, Broad Parkham, Bideford, Devon EX39 5PJ
Quentin Craven	Cheristow Cottages, Hartland, Devon EX39 6DA
Jeremy & Lynda Roe	Downe Cottages, Hartland, Devon EX39 6DA
Lynn Batten on behalf of all the members of the Hartland Environmental Action Project	The Caravan, Pitt Farm, Hartland, Devon EX39 6BZ

Appendix A – References

- 1 Repeat Applications Guidance
<http://planningguidance.communities.gov.uk/blog/guidance/making-an-application/receipt-of-an-application/dealing-with-repeat-applications-for-development-that-have-already-been-refused/>
- 2 Town and Country Planning Act 1990 Section 70A
<http://www.legislation.gov.uk/ukpga/1990/8/section/70A>
- 3 Storing Silage, Slurry and Agricultural Fuel Oil Guidance
<https://www.gov.uk/guidance/storing-silage-slurry-and-agricultural-fuel-oil>
- 4 The Animal By-Products (Enforcement) (England) Regulations 2011
<http://www.legislation.gov.uk/uksi/2011/881/made>
- 5 Derogations from the Animal By-Product controls under Regulation (EC) 1069/2009 and Commission Regulation (EU) 142/2011 (see D10 pg 42)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/376076/apb-authorisations.pdf
- 6 Dutch Study on effects of Ammonia
http://www.rivm.nl/Documenten_en_publicaties/Wetenschappelijk/Rapporten/2016/juli/Veehouderij_en_gezondheid_omwonenden
- 7 Environmental Risk Assessment of Veterinary Medicines in Slurry – EUGRIS
<http://www.eugris.info/DisplayProject.asp?P=4429>
- 8 Pathogen Export from Grassland Systems – 2004
<https://www.aber.ac.uk/en/media/departmental/ibers/pdf/innovations/04/04ch9.pdf>
- 9 DEFRA Fertiliser Manual
<http://www.ahdb.org.uk/documents/rb209-fertiliser-manual-110412.pdf>
- 10 Torridge Area Profile
<http://www.devonomics.info/sites/default/files/documents/Torridge%20Area%20Profile.pdf>
- 11 A review of the potential role of cattle slurry in the spread of bovine tuberculosis
<https://www.daera-ni.gov.uk/sites/default/files/publications/dard/tb-slurry-lit-review.pdf>
- 12 The Tuberculosis (England) Order 2014 - Control Measures
<http://www.legislation.gov.uk/uksi/2014/2383/article/16/made>
- 13 Bovine TB breakdowns map
<http://www.ibtb.co.uk/>
- 14 Natural England - Case Studies for Delivering Ammonia Measures
<http://publications.naturalengland.org.uk/file/6562864359800832>
- 15 DEFRA - Managing sewage sludge, slurry and silage
<https://www.gov.uk/guidance/managing-sewage-sludge-slurry-and-silage>
- 16 Intensive farming environmental permitting guidance
<https://www.gov.uk/government/publications/intensive-farming-introduction-and-chapters>
- 17 Guidance on the assessment of odour for planning
<http://www.iaqm.co.uk/text/guidance/odour-guidance-2014.pdf>
- 18 ILGRA - The Precautionary Principle: Policy and Application
<http://www.hse.gov.uk/aboutus/meetings/committees/ilgra/pppa.htm>
- 19 Methane, Nitrous Oxide And Ammonia Emissions During Storage And After Application Of Dairy Cattle And Pig Slurry And Influence Of Slurry Treatment
https://www.researchgate.net/profile/Barbara_Amon/publication/223541458_Methane_nitrous_oxide_and_ammonia_emissions_during_storage_and_after_application_of_dairy_cattle_slurry_and_influence_of_slurry_treatment/links/0c960525bb474349d3000000.pdf

- 20 Torridge Local Plan Policies Index
http://www.torridge.gov.uk/local_plan/contents_policies.htm
- 21 Planning Appeals Guidance
<https://www.gov.uk/guidance/appeals#appeals-against-decisions-on-planning-permission>
- 22 AONB – Tourism & Economy
<http://www.northdevon-aonb.org.uk/our-landscape/tourism-and-economy>
- 23 ELF – A lagoon is a building for planning purposes
<http://elflaw.org/all-project-list/when-a-lagoon-is-a-building/>
- 24 James Maurici QC - Opinion on what is a 'Major' development in NPPF section 11
<https://www.southdowns.gov.uk/wp-content/uploads/2015/01/Guidelines-on-Significance-for-SDNP-Planning-Applications-%E2%80%93-NPPF-Complaint-July-2014.pdf>
- 25 DEFRA - The Habitats and Wild Birds Directives in England and its seas
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82706/habitats-simplify-guide-draft-20121211.pdf
- 26 Decision of the Supreme Court in SSCLG v Welwyn Hatfield
<https://www.supremecourt.uk/cases/docs/uksc-2010-0036-judgment.pdf>

Appendix B – Planning history of Beckland slurry lagoon

- 2010** While investigating a pollution incident (see Appendix C) the Environment Agency also determined that there was insufficient slurry storage at Beckland Farm to support the herd of 1000 cows. PF was therefore advised that it needed to increase the slurry storage facilities. Note: The regulations governing the storage of slurry are very clear and accessible; and the Environment Agency is available to advise. It was PF's responsibility to ensure that the necessary slurry storage facilities were in place and authorised before increasing the herd size. There can be no doubt that PF was fully aware of the regulations while building up the herd to 1000 head during 2009/10, as it had used these regulations to justify the building of the slurry lagoon at Sedborough in 2008.
- 2011** Application 1/0735/2011/FUL submitted on 26 Jul 2011 for a 70m x 70m slurry lagoon and withdrawn on 06 Oct 2011 after 6 weeks.
- 2011** In Dec 2011 a slurry lagoon of 140m x 86m is built without planning permission at a different location to application 1/0735/2011/FUL and twice the size. Note: almost a replay of how the applicant proceeded during the building of the lagoon at Sedborough Farm in 2008.
- 2012** Retrospective application 1/0046/2012/FULM for 140m x 86m lagoon submitted on 23 Jan 2012. Note: The EA's advice is stated as justification for the unauthorised development.
- 2014** Despite numerous requests by the Council for information from PF nothing was ever received for nearly 3 years and the application was eventually refused by a unanimous vote of the Plans Committee in Nov 2014. (see email Appendix E)
- 2015** Retrospective application 1/0011/2015/FULM was submitted on 07 Jan 2015. Again information was not provided as requested. The application was withdrawn on 5 May 2015. Note: This application received considerable opposition from Hartland Parish Council and local residents. Also, the National Trust, Natural England and other consultees all recommended refusal. The National Trust states in its response that it will not renew the lease on land currently used by PF.
- 2015** TDC enters negotiations with Mr Willes because of the perceived success of the negotiations over the Sedborough lagoon. We were informed that the objective was to ensure that all the information is provided for a fresh application.
- 2015** On 7 Aug 2015 we are advised by the Council that a new application will be submitted within 2 to 3 weeks. That is by 28 August 2015.
- 2015** As of 14 Sep 2015, we have not been informed of any application being submitted and there is no application registered on the planning portal. The lagoon is still in use.
- 2015** On 18 Sep 2015, after threats of official complaints and FOI requests, we were finally informed that the deadline for the application is now the end of September. We were not told why the deadline had been extended for a month. The end of September then passed without an application being submitted.
- 2015** On 5 October 2015, we were informed that there was no deadline but that an application was expected to be submitted very soon.
- 2015** 13 October 2015, an application (1/1041/2015/FULM) was submitted but it was not valid.
- 2015** On 02 November 2015, one month later, the application is finally valid. Note: A delay of a month is not unusual for a major application but why this happened despite 6 months of prior 'negotiations' remains a mystery.
- 2015** On 14 Dec 2015 TDC issues an Enforcement Notice (14/2015) requiring the removal of the lagoon within 12 months of the effective date of 13 Jan 2017.

Note: this notice was issued to avoid the “four-year rule” and establishes Development Plan policies that could not be mitigated by conditions.

- 2016** On 26 Jan 2016 TDC extended the compliance period for the Enforcement Notice until 30 Sep 2017.
Note: it is not clear why the notice was extended after just 12 days. The implication is that it was not expected that this application would be determined within the recommended 16 weeks. However, an extended time frame has not been agreed.
- 2017** As of the date of this document the application remains undetermined. The current situation is that the applicant is challenging the Habitat Regulations Assessment produced by TDC and the advice provided by Natural England.

Appendix C – EA NIRS Data

Environment Agency National Incident Recording System (NIRS) extract for Beckland Farm. The table contains the 17 Category 2 (significant) pollution incidents recorded since 2006. In the same period there were a total of 56 recorded pollution incidents at Beckland Farm. This data was obtained by a Freedom of Information request.

NIRS ID	Date and Time	Pollutant Type	Pollutant
391162	16/04/2006 11:17	Agricultural Materials and Wastes	Slurry and Dilute Slurry
462178	16/01/2007 08:28	Agricultural Materials and Wastes	Slurry and Dilute Slurry
478849	22/03/2007 11:03	Agricultural Materials and Wastes	Slurry and Dilute Slurry
618227	04/09/2008 11:10	Agricultural Materials and Wastes	Slurry and Dilute Slurry
656244	23/02/2009 17:58	Agricultural Materials and Wastes	Slurry and Dilute Slurry
687494	13/06/2009 13:57	Agricultural Materials and Wastes	Silage Liquors
749643	30/01/2010 12:42	Agricultural Materials and Wastes	Other Agricultural Material or Waste
749643	30/01/2010 12:42	Agricultural Materials and Wastes	Slurry and Dilute Slurry
749643	30/01/2010 12:42	Agricultural Materials and Wastes	Silage Liquors
749643	30/01/2010 12:42	Agricultural Materials and Wastes	Carcasses
749643	30/01/2010 12:42	Atmospheric Pollutants and Effects	Smoke
753220	15/02/2010 10:12	Agricultural Materials and Wastes	Other Agricultural Material or Waste
753220	15/02/2010 10:12	Agricultural Materials and Wastes	Slurry and Dilute Slurry
953052	10/01/2012 08:45	Agricultural Materials and Wastes	Slurry and Dilute Slurry
1076150	08/01/2013 12:03	Agricultural Materials and Wastes	Silage Liquors
1472604	19/09/2016 16:25	Organic Chemicals/Products	Other Organic Chemical or Product
1472604	19/09/2016 16:25	Atmospheric Pollutants and Effects	Fumes

It is worth noting that during the same period there have been 102 pollution incidents at the applicant's Higher Alminstone Farm, 9 of which are Category 2 or above. This is the site of the Parkham Farms Cheese Factory.

Appendix D – Pollution Convictions

Jan 2005	Mr Willes was ordered to pay £4,000 costs and given a 12 month conditional discharge for offences under Regulations 3 and 7 of the Medicines (Restriction on the Administration of Veterinary Medicinal Products) Regulations 1994. This was as result of investigations by the Veterinary Medicines Directorate and Ireland's Department of Agriculture which seized a number of illegal veterinary medicines from Sedborough Farm in Aug 2003.
Oct 2005	Parkham Farms fined £500 and ordered to pay £1,119 costs for offences under Water Resources Act 1991. Pollution of a stream with liquid waste at Higher Alminstone. EA: "The stream at Alminstone Cross ran white with the surplus effluent. There was also sewage fungus on the bottom of the stream for around 800 metres, which showed there had been a problem for some time."
Nov 2008	Parkham Farms fined £6,700 and ordered to pay £2,583 costs for offences under Water Resources Act 1991. Pollution of a stream with liquid waste at Higher Alminstone. EA: "More than two kilometres of an important tributary of the River Torridge were polluted as a result of this incident that was one of the worst we've seen for some time. Milk waste can be very harmful when it enters rivers and streams because it strips the water of oxygen causing fish to suffocate. While we managed to recover more than 70 dead trout and coarse fish, the total number killed would have been considerably higher."
Apr 2011	Mr Willes fined £19,500 and ordered to pay £4,190 costs offences under Water Resources Act 1991. Three separate offences: 1. Allowing controlled waste to be deposited without a permit (including plastics, a fridge, tyres, light bulbs, etc) 2. Causing slurry and milk to enter a stream. 3. Allowing effluent into a further stream. EA: "No drainage survey was carried out when the dairy was expanded to identify risks and to divert water polluted with cattle faeces to the slurry tank. In addition, an enormous silage store had been built without complying with the guidelines. This had resulted in prolonged discharges of silage effluent and slurry to two separate streams, both of which were extensively affected."
Jul 2015	Mr Willes fined £4,280 and Parkham Farms £22,620 for offences under Water Resources Act 1991. Three separate offences: 1. Polluting a stream with slurry by spreading slurry just before heavy rain. 2. Diverting a water course by constructing a dam in a stream at Beckland Farm and pumping water from the stream into a reservoir. 3. Allowing waste from Parkham Farms cheese factory to be spread onto land in breach of a condition of its Environmental Permit. EA: "Slurry and farm washings can kill fish and other aquatic life by adding toxic pollutants and stripping oxygen from the water. It is therefore important farmers make every effort to ensure these farm wastes do not escape into our rivers and streams. Farmers should maximise the use of slurry as fertiliser, ensure that slurry lagoons are empty by the start of winter and also have spare capacity for emergencies."

None of the 8 pollution offences were 'technical breaches' as claimed by Mr Willes after his conviction in Jul 2015. For instance, the last conviction included sand-bagging a stream to feed the then *unauthorised* water storage lagoon at Beckland Farm. This is not a 'technicality' but a deliberate breach of widely understood rules. The same is true of the prior convictions which included burying and burning controlled waste and other serious offences.

It is clear from the level of fines that the breaches seem to be getting more serious. There have been several other pollution incidents reported to the EA, one as recently as Sep 2016 (Appendix C). Local residents have reported that PF continues to spread slurry on saturated ground. This is not consistent with any suggestion of contrition.

Higher Alminstone and Beckland have several rights-of-way across the land and through the farm complex. All but one of the pollution convictions relate to these farms. By contrast, Sedborough has no rights-of-way and is therefore not subject to the same public scrutiny. Sedborough has no pollution convictions related to it.

Appendix E – Emails

16 October 2014 from John McKay:

It has been nearly two and a half years since this retrospective major application was submitted and has now been in operation for over three years without authorisation. I would be very grateful if you could advise on the status of this application and why it is taking so long.

Response from Ms Sarah May (Planning Officer):

Dear Mr McKay,

Due to Plans Committee members requesting further information in relation to traffic impact assessment and justification for the size of the lagoon I have contacted the applicant and requested further information on numerous occasions. In addition the applicant has been asked to provide further information in light of Natural England's comments. No such information has been forthcoming and these issues are still outstanding.

I have this morning had a meeting with the Development Enabling Manager and Team Leader of the West Team to discuss the way forwards. In light of this meeting, I am now currently in the process of the writing the application up for the next committee meeting on Thursday November 6th 2014.

Kind regards
Sarah

Appendix F – Photographs

Slurry from Beckland Farm being spread from a side-spreader onto saturated ground while it was raining.
19 September 2016, near Markadon. Note the large plume of slurry which caused significant atmospheric pollution and which resulted in the Environment Agency recording (NIRS ref: 1472604) a Category 2 pollution incident.



Appendix G – Volume Weighted Average Calculation

The following figures are taken from the Transport Assessment.

	Site	Distance (D)	Volume (V)	D x V
	Norton	0.6	7,137.82	4,282.69
	Beckland (off-site)	1.0	1,814.44	1,814.44
	Markadon	3.9	5,011.96	19,546.64
	Berry	4.4	2,621.41	11,534.20
	Stitworthy	5.4	26,774.94	144,584.67
Totals:			43,360.57	181,762.64

The above table yields a volume weighted average distance of $181762.64 / 43360.57 = 4.19 \text{ km}$ or **2.6 miles**

This figure represents the average distance slurry is hauled from the lagoon to where it is spread.

Given 2800 loaded movements, this means slurry is hauled $2800 * 2.6 = 7280 \text{ miles}$

Appendix H – Article 21 of Regulation (EC)1069/2009

This European legislation includes important controls on the transportation of organic manures. While there exists an Exception Notice for some controls this will only apply where the stated conditions are met.

The Exception Notice states:

In accordance with Article 21 of Regulation (EC) 1069/2009 as read with Section 4, Chapter I, Annex VIII of Commission Regulation (EU) No 142/2011, the Secretary of State authorises by way of derogation from the first subparagraph of Article 21(2) of Regulation (EC) No 1069/2009 and Section 1, Chapter I, Annex VIII of Commission Regulation (EU) No 142/2011 the transport of manure between two points located on the same farm or between farms and users of manure within the UK, without a commercial document or health certificate provided that the transport is:

- (a) from a farmer with a farm in England to a farmer with a farm –
 - (i) in England, or
 - (ii) in Wales, Scotland or Northern Ireland and the relevant competent authority has enabled such supply;

or

- (b) to a farmer with a farm in England from a farmer with a farm –
 - (i) in England; or
 - (ii) in Wales, Scotland or Northern Ireland and the relevant competent authority has enabled such supply

and, where the manure leaves the premises (for example to be transported on public roads), provided that the operator complies with Point 1, Section I of Annex VIII of Commission Regulation (EU) No 142/2011.

Point 1, Section I of Annex VIII of Commission Regulation (EU) No 142/2011 states:

"As from the starting point in the manufacturing chain referred to in Article 4(1) of Regulation (EC) No 1069/2009, animal by-products and derived products must be collected and transported in sealed new packaging or covered leak-proof containers or vehicles."

The tankers that transport slurry to the fields are not leak-proof and are mostly dripping with slurry. The sand-rich slurry is transported in open-top trailers. These vehicles therefore do not satisfy the conditions for the derogation and should require the necessary commercial document or health certificate.

This legislation exists to protect public health. There is then, by implication, a danger to public health while these vehicles continue to operate in such high numbers and frequency without regard to this legislation.

Appendix I – Outcomes

Resubmission and Appeal

If the applicant decides to appeal the decision to refuse permission then this must be done within 28 days as the application is associated with an Enforcement Notice (14/2015) see ref [21].

Should the applicant fail in his appeal he may seek Judicial Review but this would be unlikely to be granted or succeed given both the history and the many sound reasons to refuse the application.

The slurry lagoon was built in 2011. Since then there have been four planning applications submitted. Two have been withdrawn, one has been refused, and there is the current application (see Appendix B).

The current application was preceded by over six months of negotiations by the Council with the applicant and his agents prior to its validation on 02 Nov 2015.

Given this background it would not be reasonable for the Council to allow a resubmission of an application for a slurry lagoon at Beckland Farm unless it addressed all the reasons for refusal. The Council has the power to refuse to determine 'repeat' applications under the Town and Country Planning Act 1990 – section 70A.

Enforcement

Having refused the application, and taking into account any appeal, the removal of the lagoon should be enforced as required by the Enforcement Notice (14/2015).

Following its removal the Environment Agency should require the reduction of the herd to a level that is commensurate with the remaining small lagoon.

This process should be completed as quickly as possible so that Hartland can then begin the process of recovery from the onslaught it has been subjected to for the last several years.