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## Costs Decision

Site visit made on 22 February 2022

**by Sarah Manchester BSc MSc PhD MIEnvSc**

**an Inspector appointed by the Secretary of State**

**Decision date: 27<sup>th</sup> June 2022**

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### **Costs application in relation to Appeal Ref: APP/A0665/W/21/3279078 FP McCann Ltd, Byley Road, Northwich, Cheshire, CW10 9RJ**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Paul Hammill for FP McCann Ltd for a full award of costs against Cheshire West and Chester Council.
  - The appeal was against the refusal of planning permission for change of use of land to industrial use (Class B2) for extension to existing product storage yard and creation of earth bund.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The PPG sets out examples of the types of behaviour that may give rise to an award of costs against a local planning authority in relation to its handling of the planning application. These include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; and refusing to provide reasonably requested information, when a more helpful approach could have resulted in the appeal being avoided.
4. The applicant states that during the prolonged processing of the planning application, he attempted to engage proactively with the Council and he supplied further information in a timely manner. He alleges that the Council did not work proactively with him, failing to reply to correspondence or to provide copies of objections and reports that informed its decision until after permission had been refused. Furthermore, as the decision was contrary to the advice of the Environmental Protection Team (EPT) and the independent noise consultant, the applicant considers the Council gave undue weight to the interested parties in this case.
5. The decision as to whether proposals would result in unacceptable harm, and conflict with the development plan, is a matter of judgement for the decision maker taking into account the evidence which may include not only consultee comments but also the representations of local people. Notwithstanding the conclusion of the noise assessment, the Council has a broader duty to consider

the living conditions of surrounding residential occupiers. Moreover, the PPG is clear that the weight to be given to the material considerations is a matter for the decision maker. Therefore, it was not unreasonable of the Council to exercise its planning judgement, taking into account the comments of local residents, and to conclude that the proposal would conflict with the development plan. Furthermore, as the Council was not satisfied that the necessary mitigation could be secured by planning conditions recommended by the EPT, it concluded that the development could not be made acceptable.

6. As can be seen from my appeal decision, I disagreed with the Council and I found that the development could be made acceptable by the imposition of conditions. Although I allowed the appeal, nevertheless it was a finely balanced decision, taking into account the further evidence submitted with the appeal. It does not automatically follow that the Council behaved unreasonably by refusing planning permission, in the exercise of its planning judgement, and based on the information before it at that time.
7. The applicant is frustrated by the Council's alleged failure to engage proactively during the processing of the application or to provide information. While the Council has not commented on these matters, there is little substantive evidence before me in the form of unanswered correspondence or requests to the Council. It has not been demonstrated that some or all of the information referred to was not in any case publicly available through the Council's planning database. Moreover, given the Council's decision, there is little evidence that even if these documents had been personally provided to the applicant, the appeal could have been avoided.
8. The applicant is unsatisfied by the delay in decision making and the Council's ultimate refusal of permission, particularly as he expected that permission would be granted. Undoubtedly, he has incurred expense in making the appeal including professional fees. However, he exercised his right to appeal and the parties are expected to normally meet their own costs in the appeal process.

### **Conclusion**

9. For the reasons set out above, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal, as described in the PPG, has not been demonstrated in this case. Therefore, an award of costs is not justified.

*Sarah Manchester*

INSPECTOR