

Case Name: *Cathie, R (On the Application Of) v Cheshire West and Chester Borough Council* [2022] EWHC 2148 (Admin) (12 August 2022)

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Commentary:

The Claimant in this case resides in a property that was formerly part of a farm owned by the Interested Parties (“IP”). In April 2020 the Defendant Councils granted retrospective planning permission for a reception pit (for dairy cow waste) and slatted yard at the IP’s farm. Condition 2 of this permission required that the IPs submit an odour management plan for approval by the Council within a month of grant of the permission. Odour from the reception pit had been a long running issue between the Claimant and the IPs, and the Claimants challenged the discharge of Condition 2 by the Councils on a number of grounds.

Mr Justice Bird, sitting in the Planning Court, found for the Defendant on all grounds.

Of particular interest is the Judge’s interpretation on how conditions on planning permission should be interpreted and namely that, following guidance set out in the Planning Practice Guidance, condition 2 should be “read so as to impose no more than “reasonable” obligations on the interested parties”. On this interpretation the Claimant’s submissions that by taking the IPs business model and financial circumstances into account when determining the adequacy of the odour management plan submitted by the IP, the Defendant had erred in law by considering immaterial considerations unrelated to the character of the use of the land, was bound to fail. If the Claimant’s position was correct the Judge found that would mean that in order to discharge the condition the IPs would have taken on an “disproportionate and unjustifiable financial burden” which would have made the condition unreasonable and so unlawful.

Case summary prepared by Juliet Munn