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**From:** Cross, David  
**Sent:** 23 November 2016 15:07  
**To:** Roberts, Huw; Jones, Judith (Planning); Owens, Rebecca; Ferreira, Marlene; Pulley, Caroline; Thomas, Sara  
**Cc:** O'Brien, Christopher  
**Subject:** Efi Astex Industrial Estate  
**Attachments:** Decision 3151450 App Costs.pdf; Decision 3151450 LPA Costs.pdf; Decision 3151450.pdf

Afternoon all,

After a long battle with caravans being located within the industrial estate, the matter has finally come to a conclusion!

### David Cross

Prif Swyddog Cynllunio / Principal Planning Officer

BSc (Cynllunio), Ma (Dylunio Trefol), MRTPI / BSc (Planning), Ma (Urban Design), MRTPI

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CF48 4TQ

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## Penderfyniad ar gostau

Gwrandawriad a gynhaliwyd ar 29/09/16

Ymweliad â safle a wnaed ar 29/09/16

**gan Aidan McCooey BA MSc MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 23 Tachwedd 2016**

## Costs Decision

Hearing held on 29/09/16

Site visit made on 29/09/16

**by Aidan McCooey BA MSc MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 23 November 2016**

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**Costs application in relation to Appeal Ref: APP/U6925/A/16/3151450**

**Site address: Land northwest of Aartel Bungalow, EFI Astex Industrial Estate, Brecon Road, Merthyr Tydfil, CF47 8RB**

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| <b>The Welsh Ministers have transferred the authority to decide this application for costs to me as the appointed Inspector.</b> |
|----------------------------------------------------------------------------------------------------------------------------------|

- 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 Chris Marshall for a full award of costs against Merthyr Tydfil County Borough Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the siting of a mobile home for residential purposes.

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## Decision

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

### The submissions for Mr Chris Marshall

2. The application was submitted in writing. The essence was that the Sound Survey submitted by the appellant contained empirical data and evidence which addressed the Council's and previous Inspector's concerns regarding the impact of noise and disturbance from the industrial estate on the occupiers of the proposed mobile home. This was pointed out to the Council, who nevertheless maintained its objection on this ground. No empirical evidence or analysis was produced to counter the Sound Survey. This failure has led to unnecessary expense in pursuing the appeal when planning permission should have been granted in the first place.
  3. The appellant's comments were made verbally at the hearing. The Sound Survey used the appropriate standards and thresholds from Welsh Government guidance. The Council has used their own with no evidence to support this approach. The basic point is that the Council must substantiate its reason for refusal. No technical noise evidence has been supplied and there is reference to matters outside standards with no explanation provided. This is indicative of unreasonable behaviour. There is undue reliance on the previous appeal decision, in which the Inspector did not have the benefit of any sound survey. The Council has not considered the submitted noise information as it should have done.
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4. Circumstances could change in the future. However, any application must be determined on its own merits in the light of the circumstances that exist at the time. To do otherwise is unreasonable behaviour on its face.

### **The response by Merthyr Tydfil County Borough Council**

5. It is alleged that the Council had little regard to the Sound Survey and without evidence to substantiate them has drawn unreasonable conclusions. It is clear from the Council reports and submissions that regard has been given to the noise assessment. There is clearly a difference in judgement on the impact of noise and disturbance on residential amenity. The thresholds in the noise survey are higher than one would expect for a normal person enjoying their residential property. It is considered that ad hoc sounds and noise levels would still form an irritation to those residents and affect how they enjoy their property. A further point is the uncertainty as to what could change in the future with new businesses or practices occurring on the industrial estate, which is unfettered in terms of use or hours of operation.

### **Reasons**

6. Circular 23/93 – Awards of Costs Incurred in Planning and Other Proceedings (the Circular) 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. The appellant referred in particular to Annex 3 paragraphs 8 and 12 as it was argued that the Local Planning Authority had not produced evidence to substantiate the reason for refusal and clearly show why planning permission should not be granted.
7. In this case the Council relied on concerns raised by the environmental health officer, objectors and by an Inspector in a previous appeal decision for a similar proposal on the same site. I have found that these concerns were not sufficient to warrant the refusal of planning permission because of the noise survey submitted by the appellant. Nonetheless, that does not mean that the Council's concerns were not supported by any evidence. There was evidence adduced from the relevant professional officers regarding the potential impact of noise on occupiers of the appeal site. The concerns expressed in a recent appeal decision were also a relevant consideration, which was accepted as such by the appellant in his submissions. Finally, genuine concerns were raised by several of the businesses on the industrial estate about the impact of the residential use on their business operations.
8. I do not consider that this is a case where the Council has acted unreasonably in all these circumstances. Evidence has been produced to substantiate the single reason for refusal. This evidence was the subject of debate at the hearing, where the Council's concerns were clearly articulated and supported by witness and written submissions. The impact of sudden unexpected noises and difficulty hearing conversations during site visits were referred to by the Council. Concerns regarding possible future changes to the operations at the nearby industrial premises were also raised. It is understandable to raise these concerns given that the appeal is for a residential use near a general industrial estate. The fact that I did not support these concerns does not mean that evidence was not produced to substantiate the reason for refusal and clearly show why planning permission should not be granted.

## **Conclusion**

9. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 23/93, has not been demonstrated. An award of costs is therefore not justified.

*A L McCooey*

**Inspector**

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## Penderfyniad ar gostau

Gwrandawriad a gynhaliwyd ar 29/09/16

Ymweliad â safle a wnaed ar 29/09/16

**gan Aidan McCooey BA MSc MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 23 Tachwedd 2016**

## Costs Decision

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Site visit made on 29/09/16

**by Aidan McCooey BA MSc MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 23 November 2016**

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**Costs application in relation to Appeal Ref: APP/U6925/A/16/3151450**

**Site address: Land northwest Aartel Bungalow, EFI Astex Industrial Estate, Brecon Road, Merthyr Tydfil, CF47 8RB**

**The Welsh Ministers have transferred the authority to decide this application for costs to me as the appointed Inspector.**

- 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 Merthyr Tydfil County Borough Council for a full award of costs against Mr Chris Marshall.
- The hearing was in connection with an appeal against the refusal of planning permission for the siting of a mobile home for residential purposes.

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## Decision

1. The application is dismissed.

### The submissions for Merthyr Tydfil County Borough Council

2. The Council's application was submitted in writing. The basis for the application was that the appellant's behaviour was unreasonable because he did not submit a statement of case on time and pursued an appeal which obviously had no reasonable prospect of success (examples 1 and 5 of the Appendix to Circular 23/93). The statement of case was nearly two weeks late, which gave the Council little time to prepare any final comments.
3. The Council referred to a long history of enforcement action since 2011 and several earlier applications for the same proposal on the same site that had been refused. One of these refusals was the subject of an appeal in 2015, which was dismissed. In these circumstances paragraphs 1 and 5 of Annexe 3 indicates that an appellant may be at risk of an award of costs if circumstances have not changed since the previous appeal and this appeal had no reasonable prospect of success. The application also caused a delay in taking enforcement action pursuant to a valid enforcement notice on the site.

### The response by Mr Chris Marshall

4. The appellant's statement of case was late. However, there were exceptional reasons why it was late in relation to personal problems experienced by a member of staff. As soon as it was recognised that the statement of case was due action was taken to
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prepare it and send it to the Council. The Council chose not to comment on the statement of case at any stage. The basic point is that this late submission did not result in any extra work or costs for the Council. In terms of the grounds for awarding costs, the late submission was not unreasonable and did not result in any additional works or costs for the Council.

5. The appeal arose from previous decisions where the proposal had been refused and dismissed at appeal on one issue – noise. The appellant has commissioned a noise survey by a competent professional. The results of this survey show that the noise levels do not exceed the appropriate standards and therefore that planning permission should be granted. It cannot be unreasonable to apply for planning permission for the development in these circumstances. Finally, nothing has been delayed by this application. There is an enforcement notice on the site and the Council could still have taken action at any time, irrespective of the processing of this application.

### **Reasons**

6. Circular 23/93 – Awards of Costs Incurred in Planning and Other Proceedings (the Circular) 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.
7. I accept that there were genuine reasons for the delay in the submission of the statement of case. However, it was received by the Council in time for comments to be made and well in advance of the hearing. I fail to see how this delay has resulted in any unnecessary or wasted expense for the Council because no additional work was generated and no comments were made on the statement.
8. There have been several earlier applications for a similar proposal on the site, which were both refused by the Council. The refusal of the second application in 2015 was the subject of an appeal to Welsh Ministers. On the face of it, a further application for the proposal would appear to be unreasonable in these circumstances. However, the previous decisions relied solely on subjective assessments of noise levels and the consequent impact on living conditions at the site. The appellant has undertaken a noise survey, which has concluded that the noise thresholds in TAN 11 Noise (with reference to BS 4142:2014) would not be exceeded by the existing noise levels with a considerable margin for uncertainty. This is fresh evidence which is worthy of consideration under another planning application. I have found this evidence to be convincing and allowed the appeal. The Council's argument on this ground is unfounded.
9. The Council were not barred from pursuing enforcement action by the submission of the planning application and this matter is clearly separate from the current appeal process. The Council's argument on this ground is also unfounded.

### **Conclusion**

10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 23/93, has not been demonstrated. An award of costs is therefore not justified.

*A L McCooey*

**Inspector**

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## Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 29/09/16  
Ymweliad â safle a wnaed ar 29/09/16

**gan Aidan McCooey BA MSc MRTPI**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 23 Tachwedd 2016**

## Appeal Decision

Hearing held on 29/09/16

Site visit made on 29/09/16

**by Aidan McCooey BA MSc MRTPI**

**an Inspector appointed by the Welsh Ministers**

**Date: 23 November 2016**

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**Appeal Ref: APP/U6925/A/16/3151450**

**Site address: Land northwest of Aartel Bungalow, EFI Astex Industrial Estate, Brecon Road, Merthyr Tydfil, CF47 8RB**

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|-------------------------------------------------------------------------------------------------------------------|
| <b>The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.</b> |
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- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Chris Marshall against the decision of Merthyr Tydfil County Borough Council.
- The application Ref P/16/0010, dated 3 December 2015, was refused by notice dated 7 March 2016.
- The development proposed is the siting of a mobile home for residential purposes.

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## Decision

1. The appeal is allowed and planning permission is granted for the siting of a mobile home for residential purposes at Land northwest of Aartel Bungalow, EFI Astex Industrial Estate, Brecon Road, Merthyr Tydfil, CF47 8RB in accordance with the terms of the application, Ref P/16/0010, dated 3 December 2015, and the plans submitted with it, subject to the following conditions:
  1. No more than one caravan, as defined in the Caravan Sites and Control of Development Act 1990 and the Caravan Sites Act 1968 shall be stationed on the site at any time.
  2. Within 3 months of the date of this decision a scheme for the disposal of foul water shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation. The scheme shall be implemented in accordance with the approved details and retained in perpetuity.
  3. Any caravan located on the site shall be equipped with acoustic ventilators in compliance with BS 3632:2005.

## Main Issue

2. I consider that the main issues in this case are the effect of noise and disturbance on the occupiers of the residential unit as a result of its location adjacent to industrial and
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commercial premises and any potential impact on those industrial and commercial operations because of the presence of a residential unit on the site.

### **Reasons**

3. The site is located near an established industrial estate within the built-up area of Merthyr Tydfil. The access to the industrial estate is off Brecon Road, near the entrance to Cyfartha Castle. The access slopes down from Brecon Road, running through an area of mature trees. The site is close to the access road. It consists of a compound surrounded by fencing and is currently occupied by some stables and two caravans. A new storage building is within the fenced area, but has been excluded from the appeal site. It has recently received planning permission.
4. Policy BW 7 of the Merthyr Tydfil Local Development Plan 2006 – 2021 requires that development should not result in unacceptable impact on local amenity in terms of disturbance and traffic movements (amongst other criteria). Planning Policy Wales 9<sup>1</sup> (PPW) states that residential development in the vicinity of existing industrial estates should be restricted if the presence of houses is likely to lead residents to try to curtail the industrial use. TAN 11<sup>2</sup> states “Local planning authorities should consider whether proposals for new noise-sensitive development would be incompatible with existing activities, taking into account the likely level of noise exposure at the time of the application and any increase that may reasonably be expected in the foreseeable future. Such development should not normally be permitted in areas which are, or are expected to become, subject to unacceptably high levels of noise and should not normally be permitted where high levels of noise will continue throughout the night”.
5. Planning permission for this use has been previously refused on two occasions for a similar reason to the current application. The most recent decision was the subject of an appeal<sup>3</sup>, where the Inspector concluded that the occupiers of the residential unit would be subjected to unacceptable noise and disturbance from operations on the industrial estate. The noise sources referred to were fork lift trucks, delivery activity and vehicles passing close to the site. The background to the existing industrial estate is that it is well established and general industrial uses are permitted and in operation thereon.
6. The appellant submitted a noise report or sound survey with the application in order to provide objective evidence on the concerns raised by the Council and the Inspector in the earlier appeal. The survey was undertaken on 2 & 3 November 2015. TAN 11 (as updated) refers to the use of BS 4142:2014 as an appropriate standard for assessing the impact of industrial and commercial noise. The survey used BS 4142:2014 and also BS 8223:2014 for assessing internal noise impacts including noise levels over a longer night time period. The results of the survey indicate that the industrial and commercial noise as measured was well below the thresholds set in BS 4142:2014, BS 8223:2014 and World Health Organisation guidelines.
7. The Environmental Health Officer broadly accepted the results and that the survey had been correctly undertaken. The Council’s concerns were the basic incompatibility of residential use next to industrial uses and that the circumstances of the industrial uses

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<sup>1</sup> Planning Policy Wales Edition 9, paragraph 9.3.2

<sup>2</sup> Technical Advice Note 11 Noise, October 1997, as updated on 25 November 2015

<sup>3</sup> APP/U6925/A/15/3033319, dated 22 September 2015

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could change in terms of the businesses involved and/ or their methods of operation. The sound survey addressed this point by including analysis for uncertainty which indicates that there is considerable scope for variation in existing conditions without increasing noise to a level that would not meet the thresholds. The evidence indicated that the existing noise sources would have to increase eight-fold to exceed the thresholds.

8. The Council and objectors questioned how representative this survey was; being a snapshot in time outside the peak trading months for one business. There was no evidence to indicate that the survey was not representative of the activities on site. The author had been present throughout and had witnessed the activities referred to by the Council and the previous Inspector taking place i.e. forklift trucks reversing and delivery vehicles movements. In addition he observed electric band saws in operation in the nearby joinery unit with the doors open. The sound survey included penalties for the reversing warning sirens and clattering sounds of the forklift trucks. This addresses the Council's concerns in this regard.
9. The other issue raised is the potential impact on the existing industrial businesses contrary to PPW. Several of the businesses objected to the proposal on these grounds. The industrial units do not have conditions restricting their use or hours of operation. The current uses generate traffic movements close to the proposal. Fork lift trucks are used to transfer goods and materials between units occupied by the largest business on the site. The Environmental Health Officer stated that noise complaints are assessed against the existing character of the area and that it was therefore highly unlikely that any action could be taken in relation to noise complaints from the occupiers of the appeal site.
10. The owner of Riverside bungalow attended the hearing. This property is located in the middle of the industrial estate. She has lived there for around 30 years and has not had any issues with noise including that of lorries and forklift trucks. The units do not operate much beyond 17:00; she had never heard anything at night. Her garden is not affected and her grandchildren play there untroubled by noise.
11. I acknowledge the concerns regarding noise from the adjacent units and passing traffic or deliveries. The planning witness had difficulty hearing the appellant speak on site during one visit. I have visited the site on several occasions and witnessed the noise sources associated with the units facing north that are closest to the appeal site. The units to the south are screened from the appeal site by buildings and do not add significantly to the noise impact. The evidence before me is more extensive and objective than that available to the Inspector in 2015. The results of the noise survey have not been challenged by any contrary survey or objective evidence. I must assess the proposal on the basis of the evidence and the conditions that prevail at the time of making this decision. There was no evidence that circumstances are going to change. The local resident stated that some of the firms have been there longer than she has and that the largest business has been operating for 10 years. In the final analysis, given the evidence of the Environmental Health Officer on future complaints, the only possible future issue would be for the appellant and other occupiers of the residential unit. The evidence confirms that the effect on living conditions in this particular case is not so severe as to warrant the refusal of planning permission on these grounds.
12. It was indicated that noise attenuation measures including the use of acoustic ventilators to ensure that the windows remain closed at night would meet the standards in BS 8233:2014. It was argued that the existing fence provides adequate

attenuation of noise and a 3m acoustic fence would not therefore be required. The Council queried the extent of the attenuation based on inputting the figures into an online tool. The appellant's witness countered that the calculations had been undertaken properly using the appropriate references. Even if the Council's figure were correct then the proposal would still meet the required standards without the acoustic fence. There remained some concerns regarding the outside amenity space, given the line of sight to some noise sources. However, the survey indicated that this too met the appropriate standards and therefore TAN 11. I conclude that the proposal complies with LDP Policy and national policy on the basis of the information before me.

13. The site is in Cyfartha Conservation Area but it is within an enclosed compound with an existing storage building and stables. It has a close visual association with the existing industrial estate. Wider views of the site are screened by trees and topography. The same applies to nearby listed buildings and scheduled ancient monuments. My assessment is that the impact on the character and appearance of the Conservation Area and on the settings of designated heritage assets would be negligible. The statutory and policy tests for the impact on heritage assets would be met. This was the view of the Council and the previous Inspector also.
14. It was claimed that the compound fencing blocks a right of way. This is unrelated to the proposal before me. The Council informed me that there is no public right of way on the site and the fencing cannot have any effect on public rights of way. Concerns were raised regarding parking on the industrial estate. The proposal would provide ample parking within the existing compound. The increased use of the existing access to the industrial estate would not be significant. The access road is relatively short and passable with care for pedestrians. Indeed, I witnessed several walkers using the route during my site visits.
15. The appellant confirmed that gypsy/traveller and Human Rights considerations were not relevant to this appeal. As I have found the development to be acceptable in its own right I do not need to consider its benefits in terms of supply of housing in the area.
16. The Council considers that a satisfactory means of foul drainage can be achieved. The previous Inspector considered that this matter could be addressed by a condition and I agree. The suggested wording was not questioned. The parking arrangements were considered to be satisfactory for one caravan and it is therefore necessary to restrict the number of caravans on the site to one. The Council had suggested that details of noise attenuation measures should be submitted for approval. However the Local Planning Authority resiled from that position at the hearing because the application was for a change of use and not for a particular caravan/ mobile home. The sound survey relied on appropriate ventilation being installed in the caravan. The agent confirmed that this was a requirement of BS 3632:2005. I consider that a condition requiring any caravan sited under this planning permission to have appropriate ventilation to comply with this standard would meet the legal tests. In the event of a complaint from the occupiers regarding noise at night then the Council could refer to this condition in response. As the evidence demonstrates that the noise levels do not exceed the relevant standards, there would be no justification for a personal planning permission, which was suggested by the Council.

## **Conclusion**

17. Evidence has been presented that addresses the single reason for refusal, the objectors' submissions and concerns raised in the earlier appeal decision. The proposal would comply with LDP and national policy on noise impacts and would not prejudice the existing industrial operations nearby. Having considered all the evidence, I conclude that the appeal should be allowed and that planning permission should be granted.

*A L McCoey*

**Inspector**

## **Appearances**

### **Appellant**

|                   |                                  |
|-------------------|----------------------------------|
| Mr Matthew Green  | Agent of Green Planning Studio   |
| Mr Tim Green MIPS | Noise Witness of Tim Green Sound |

### **Local Planning Authority**

|                              |                              |
|------------------------------|------------------------------|
| Mr David Cross BSc MA, MRTPI | Development Management       |
| Ms Aileen Rahilly            | Environmental Health Officer |
| Mr Craig Watkins             | Policy Officer               |

### **Supporters**

|                     |                                         |
|---------------------|-----------------------------------------|
| Mr Mark Howell      | Local Landowner                         |
| Mrs Janette Murdoch | Resident of EFI Astex Industrial Estate |

## **Documents**

Hearing Statement and Appendices from Agent  
Plan of Efi Astex Industrial Estate from the Council