



Costs Decision

Site visit made on 9 March 2022

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 24th March 2022

Costs application in relation to Appeal Ref: APP/X1545/W/21/3279176 Highfields, Maldon Road, Bradwell-on-Sea, Southminster, CM0 7HZ

- 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 Highfield Events Ltd for a full award of costs against Maldon District Council.
 - The appeal was against refusal of planning permission for use of land for weddings and similar functions for a maximum of 14 events per year between 1st March and 30th September including a temporary marquee.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may 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 Application

3. The Council has acted in an unjust and inappropriate manner, failing to demonstrate the reason and purpose for refusing the application and why it was necessary to previously restrict the development to a temporary and extremely limited period. It is therefore considered that the authority has acted unreasonably. Paragraph 49 contained of the PPG section on 'Appeals' demonstrates that an award of costs is justified as the authority has failed to justify its decision.
4. The original permission will shortly expire in May 2022, and due to the Covid-19 pandemic it has not been possible for any events to take place. However, the principal fact is that there is no justification for refusing planning permission or limiting the period of use in the first place. No concerns or objections have been raised by any third party to the original application or that subject of this appeal. The only comment arises from the Council's Environmental Health officer who had suggested a 2 year permission may be wise.

5. This approach does not however sit squarely with the planning legislation, and in particular the government's statements in respect of the use of such a condition as set out in the PPG. The PPG does accept that a temporary permission may be appropriate where a trial run is needed in order to assess the effect of the development on the area. However, in this case there can be no affect or impact upon the wider area due to the absence of any immediate neighbour. It is therefore incredible that the council suggests that the requirement should be imposed to protect the 'amenity' of the area when no attempt has been made to define what 'amenity' it is seeking to protect.

The Rebuttal

6. The Council strenuously resists a costs award in this case or that there are grounds for making the application. It is not accepted that the Council has acted unreasonably or that it has caused the appellant to incur costs unnecessarily.
7. The reasoning for the temporary permission was discussed within the Officers report for 20/00290/FUL as set out in paragraph 5.2.4 - *"Due to its temporary nature and appearance, it is unlikely to be suitable to allow this to be in place permanently and therefore, a condition will be included that grants this on a temporary basis to allow the Council to assess the impact on the development after the time period."* and in paragraph 5.3.5 - *"The Council's Environmental Health team have been consulted and have no objections subject to conditions. As there are no neighbouring properties within a close proximity to the site, it is not considered that the proposal would have a significantly harmful impact on neighbouring sites. However, a condition will be included granting a temporary permission in order for the Council to be able to re-assess the impacts at the end of the trial period"*. Similar points were made by the officer in the report on the application 20/01211/FUL subject of this appeal.
8. In respect of a lack of objections by third parties, the absence of objections is not a reason to grant unrestrained planning permission; the purpose of the planning system is to make a fair and balanced decision, which has been achieved in this case. Given the nature of the use, the noise that could potentially emanate from the venue could impact neighbouring properties some distance from the site itself. In addition, the concerns raised in relation to the visual impact do not appear to be addressed by the appellant.
9. For completeness I note that the council's rebuttal makes reference to remarks about the recently issued temporary planning permission, but there is not any cogent connection between the two in respect of this costs claim, and I make no further reference to it.

Conclusions

10. As will be seen from my decision issued on this case, I have decided in favour of the appellant on the substantive question of whether the proposed development should be permitted. The council's justification for a temporary permission was slender in the first place: as quoted in paragraph 7 above, *"Due to its temporary nature and appearance, it is unlikely to be suitable to allow this to be in place permanently..."* this does not explain what the issues are that need testing by a temporary period of use. This lack of justification is further indicated by the other remarks by the officer, quoted above: *"... it is not considered that the proposal would have a significantly harmful impact on*

neighbouring sites.” That does not indicate a reason for refusing a permanent permission.

11. There is no indication that consideration was given to another temporary permission, when it should have been obvious that the Covid-19 pandemic would have made it very difficult to proceed with the project in view of the lockdown and uncertainty about when the business might be able to function viably.
12. It seems to me that the visual effect of the development on the area could be assessed without a trial run, and the noise aspects were well covered by the submitted report from specialist consultants and could be dealt with by conditions. It is almost as if the attitude was taken that a trial period was offered and since this was not taken up, the proposal should be not be considered further. The refusal reason has not been justified by the council.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Maldon District Council shall pay to Highfield Events Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

Terrence Kemmann-Lane

INSPECTOR