

Costs Decision

Site visit made on 22 September 2016

by J Dowling BA(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 September 2016

**Costs application in relation to Appeal Ref: APP/L3625/W/16/3152270
ChristChurch (formerly Banstead Baptist Church), 150 High Street,
Banstead, Surrey SM7 2NZ (Cost application A)**

- 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 Stewart Foster for a full award of costs against Reigate and Banstead Borough Council.
 - The appeal was against the refusal of planning permission for approval of details pursuant to condition No 7 of planning permission Ref P/12/02085/F.
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**Costs application in relation to Appeal Ref: APP/L3625/W/16/3152271
ChristChurch (formerly Banstead Baptist Church), 150 High Street,
Banstead, Surrey SM7 2NZ (Cost application 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 Stewart Foster for a full award of costs against Reigate and Banstead Borough Council.
 - The appeal was against the refusal of planning permission for approval of details pursuant to condition No 10 of planning permission Ref P/12/02085/F.
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Decision

1. Cost application B is refused and cost application A is allowed in the terms set out below.

Reasons

2. National Planning Practice Guidance (the PPG) advises that costs may be awarded against a party who has acted unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeals process.
3. The PPG states that costs may be awarded in circumstances including 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.
4. Authorities are expected to produce evidence to substantiate their case with reference to the development plan and all other material considerations, showing clearly why the proposal cannot be permitted.
5. The applications (cost application A and B) made by the appellant are on the basis that the Council acted unreasonably in refusing to discharge the conditions and as a result have delayed the development.

6. With regards to cost application B the Council have accepted that their tree officer misread the plans. However, it is also clear from the evidence before me that whilst the written AMS may have only referred to tree T1 the appellant contributed to the confusion by submitting plans that were out of date, being based on an earlier site survey, and as a consequence did not accurately reflect the current situation with regards to both trees and buildings at the site.
7. The reason given for the imposition of the condition was to ensure that trees at the site would not be lost as a result of damage during construction in the interests of maintaining the character and appearance of the area. Therefore, whilst the Council could have sought clarity on this matter prior to determining the application, given the difficulties of replacing mature trees that do become damaged or lost I do not consider that the Council were incorrect to adopt a precautionary approach, given their concerns, to refuse the application.
8. Furthermore, the Council have submitted a comprehensive appeal statement supported by policies outlining why they refused permission. As a result I do not consider that the Council has acted unreasonably.
9. However, with regard to the MCS a revised MCS (revision C dated April 2016) was submitted, albeit at a very late stage, to the Council prior to their determining the application. The revised MSC re-sequenced the events so that whilst it didn't detail what the tree protection measures were, which would be covered by the AMS, it advised that they would be implemented as the first step in construction and as a consequence would accord with the details of the AMS. As a result I consider that the Council, whilst not having approved the AMS, could be satisfied that tree protection measures would be the first action carried out on site and could therefore be confident that the trees would be protected during construction. Therefore, I consider that the Council did act unreasonably in refusing this application and thus the appellant's costs in submitting this appeal were unnecessarily incurred and an award of cost is therefore justified.

Costs Order

10. In exercise of the powers under section 250 (5) of the Local Government Act 1972 and Schedule 6 of the Town and Country planning Act 1990 as amended and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Reigate and Banstead Borough Council shall pay Mr Stewart Foster the cost of the appeal proceedings described in the heading of this decision limited to the costs incurred in relation to preparing to defend appeal reference APP/L3625/W/16/3152270.
11. Mr Stewart Foster is now invited to submit to Reigate and Banstead Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement on the amount. In the event that the parties cannot agree on an amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Jo Dowling

INSPECTOR