

Costs Decision

Inquiry opened on 10 January 2017

Site visit made on 17 January 2017

by C J Ball DArch DCons RIBA IHBC

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

Decision date: 13 March 2017

Costs application in relation to Appeals ref: APP/N5660/W/16/3151091 and APP/N5660/Y/16/3151092

London Russian Ballet School, 42 Clapham Manor Street, London SW4 6DZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6; the Planning (Listed Buildings and Conservation Areas) Act 1990, sections 20, 89 and Schedule 3; and the Local Government Act 1972, section 250(5).
 - The application is made by the London Russian Ballet School and Kids Love Lambeth for a full award of costs against the Council of the London Borough of Lambeth.
 - The inquiry was in connection with appeals against the refusal of planning permission and listed building consent for the demolition of existing garage, kitchen and store; internal alterations; erection of new rear extension; and excavation of new basement area beneath building; all to provide enhanced ballet teaching facilities.
 - The inquiry sat for 6 days on 10-13 and 17-18 January 2017.
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Decision

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

The submissions

2. The costs application made by the London Russian Ballet School and Kids Love Lambeth was submitted in writing during the inquiry. The response by the Council of the London Borough of Lambeth was also made in writing at the inquiry.
3. In assessing the application I have also taken into account evidence given at the inquiry, the officers' report to the Planning Applications Committee (PAC), addendum reports dated 20 and 24 November 2015 and the minutes of the committee meeting on 24 November 2015.

Reasons

4. The Planning Practice Guidance 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.
 5. The aim of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case; to encourage local planning authorities to properly exercise their development management responsibilities, relying only on reasons for refusal which stand up to scrutiny on the planning merits of the case; and not to add to development costs through avoidable delay.
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Background

6. National Planning Policy Framework paragraph 188 advises that early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community. The Council's Lambeth Local Plan (LLP) policy D2, in line with this advice, confirms that the Council will always work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible. The supporting text at 4.8 affirms that pre-application discussions are an important tool for achieving the best outcome. Developers are strongly encouraged to engage with the Council's planning service early in their thinking, and to seek initial advice from specialists (such as conservation and urban design officers, transport officers, crime prevention design advisors, Thames water) and from statutory partners (such as Historic England and the Environment Agency).
7. In full accordance with this advice the proposal to extend the ballet school was discussed with a range of Council officers and other consultees over a period of 5 years. Design is an iterative process and the proposals were refined through a series of discussions and negotiations with the officers, taking account of comments by neighbours. Much of the discussion centred on the impact of the proposal on 42 Clapham Manor Street as a listed building and on the Rectory Grove conservation area within which it lies, both designated heritage assets. Their significance as heritage assets, and the effect of the proposal on that significance, was clearly at the core of those discussions.
8. As the Guidance points out, the assessment of the significance of the heritage asset by the local planning authority is likely to need expert advice in addition to the information provided by the historic environment record, similar sources of information and inspection of the asset itself. Advice may be sought from appropriately qualified staff and experienced in-house experts or professional consultants. In the discussions advice was provided by the Council's experienced and highly regarded Delivery Lead for Conservation and Urban Design (DLCUD).
9. Other detailed discussions took place with Council officers and external consultees regarding neighbour amenity, in terms of sunlight, daylight, overshadowing, privacy and outlook; noise impact; construction management; transport and parking; refuse and waste; energy and sustainability; ecology and biodiversity; archaeology; structural stability, including basement impact; and flooding.
10. In assessing the impact of the finalised proposal, the Council's officers concluded that all the technical requirements would be met and, after review, that the proposal would cause no significant harm to the significance of the listed building but slight harm to the significance of the conservation area. They recognised the numerous public benefits of the proposal and, against the national and local policy background, concluded that these outweighed the less than substantial harm identified. They made a clear recommendation of approval, subject to a comprehensive list of conditions.

The Council's decision

11. The decision to refuse the applications was made by Council members contrary to the considered professional advice of their officers. Members are not obliged to accept the recommendations of their officers but, in taking a contrary decision, they are expected to justify it on clear planning grounds. Members evidently

disagreed with the judgement of their officers regarding the level of harm to the building, the impact on neighbouring properties, the extent of the public benefits and the weight to be attached to them, the fact that local basement policy was under review and that construction arrangements were unclear.

12. Matters of judgement can be subjective so clear planning reasons, based on objective assessment against the relevant policy considerations, are necessary to explain why Members came to the conclusions they did and thus why they considered the officers' conclusions to be wrong. As recorded by the minutes of the PAC on 24 November 2015, Members remarked that:
- The proposed basement by virtue of its scale and design would harm the special architectural and historic interest of the listed building. Some Members also raised doubts about the physical viability of the excavation given the limitations of the site and surrounding highway network.
 - Clapham Manor Street suffered with traffic flow problems and the surrounding access roads were narrow, congested and heavily parked. In the absence of a Construction Management Statement or other information on managing the impact of construction, the applicant had failed to demonstrate that adequate measures would be taken to minimise the harm to be caused to the amenity of neighbouring residents in terms of noise and disturbance and to the local highway network in terms of highway safety and traffic flows.
 - The proposed rear extension would fail to be subordinate and would cause harm to the special architectural and historic interest of the listed building as well as to the character and appearance of the Rectory Grove Conservation Area. The applicant had also failed to provide evidence of any significant public benefits that would result from the scheme. The public benefits would therefore fail to outweigh the harm to be caused to the local heritage assets.
 - The proposed rear extension would have an undue impact on the amenity of neighbouring residential properties. In particular No.40 Clapham Manor Street would suffer loss of outlook and experience an unacceptable sense of enclosure as a result of the development.
13. The subsequent reasons for refusal of the applications were:

Planning application (PA)

1. The proposed rear extension by virtue of its height, bulk, mass, design and relationship to the existing building would fail to be subordinate and would cause harm to the special architectural and historic interest of the listed building and to the character and appearance of the Rectory Grove Conservation Area. This harm would not be outweighed by the public benefits of the development and is contrary to policies Q5 (Local distinctiveness), Q11 (Building alterations and extensions), Q20 (Statutory listed buildings) and Q22 (Conservation areas) of the Lambeth Local Plan 2015.

2. The proposed rear extension by virtue of its height, bulk, mass and proximity to neighbouring residential properties, including No.40 Clapham Manor Street, would result in loss of outlook and create an unacceptable sense of enclosure to the detriment of the living conditions of the existing and future occupiers of these properties contrary to policy Q2 (Amenity) of the Lambeth Local Plan 2015.

3. The proposed basement by virtue of its scale and design would harm the special architectural and historic interest of the listed building. This is contrary to policies Q11 (Building alterations and extensions), Q20 (Statutory listed buildings) of the Lambeth Local Plan 2015.

4. In the absence of sufficient supporting information on managing the impact of construction, the applicant has failed to demonstrate that adequate measures have been taken to minimise the harm that would be caused to the amenity of neighbouring residents in terms of noise and disturbance and to the local highway network in terms of highway safety and traffic flows. This is contrary to policies Q2 (Amenity), T6 (Assessing impacts of development on transport capacity) and T8 (Servicing) of the Lambeth Local Plan 2015.

Listed building consent (LBC)

1. The proposed rear extension by virtue of its height, bulk, mass, design and relationship to the existing building would fail to be subordinate and would cause harm to the special architectural and historic interest of the listed building. This harm would not be outweighed by the public benefits of the development and is contrary to policy Q20 (Statutory listed buildings) of the Lambeth Local Plan 2015.

2. The proposed basement by virtue of its scale and the intrusive nature of its construction would cause harm (to) the special architectural and historic interest of the listed building. This is contrary to policy Q20 (Statutory listed buildings) of the Lambeth Local Plan 2015.

14. Before the inquiry, following further discussion, PA reason 4 was withdrawn on the basis that a Construction Method Statement could be required by condition, as originally recommended by officers. Such a condition would give the Council control over the impact of construction on amenity and highways. This was the right course of action since refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs and would have been difficult to justify at appeal. However, all planning decisions are a balance of considerations and, despite this issue clearly weighing heavily in the Members' decision, there was no reassessment of the overall balance.

Discussion

15. Before the inquiry, following intervention by the Clapham Society, Heritage England (HE) issued an updated and detailed list entry for 42 Clapham Manor Street, providing an up-to-date historic environment record for the building. This was referred to by the parties in evidence.
16. The applicants' cost claim relates to the substance of the Council's case and is in 3 parts, relating to PA reason 3 and LBC reason 2: the basement; PA reason 2: amenity of neighbours; and PA reasons 1 and 3 and LBC reasons 1 and 2: heritage arguments, planning benefits and the overall planning balance.

PA reason 3 and LBC reason 2: the basement

17. The Guidance, and indeed the Council's own LLP policy D2, advises that, when assessing the significance of a heritage asset, expert advice should be sought. Advice on significance and the impact of the proposal was provided by the Council's DLCUD who nowhere identified any concern about the impact of the basement. After rejecting the expert advice of its own officer Members did not reassess the significance of the building before coming to the conclusion, without

expert advice, against the Council's own guidance, that the basement would harm its special interest. There was no evidence for that conclusion and that is not the proper test. As the Framework makes clear, it is the impact of development on the significance of a heritage asset that must be considered, and many assets contain features that do not contribute to their significance.

18. HE's updated list entry for 42 Clapham Manor Street is a case in point. HE's assessment makes it clear that the plan is of no specific importance and that the original interior plan form and fittings are largely lost. The refurbished interior – partitions, floors, ceilings, fittings and stairs – is of no heritage value and, pursuant to s.1(5A) of the Planning (Listed Building and Conservation Areas) Act 1990 (PLBCA), could be altered or removed without consent. The significance of the building lies primarily in its historic interest and its imposing street frontage.
19. Despite the very specific wording of the reasons for refusal, the Council's conservation evidence to the inquiry made no reference to either the scale of the basement or the intrusive nature of its construction. At the inquiry the Council's conservation witness conceded that the scale of the basement was not harmful and that the proposal complied in all respects with the basement provisions of LLP policy Q11. As a result, there was a clear failure to substantiate these reasons.
20. His evidence went on - astonishingly, without him having visited the site - to assert harm in relation to loss of historic floor plan, loss of historic floor levels and loss of historic fabric. Neither the PAC minutes nor the reasons for refusal make reference to these features and there is no evidence that this was what Members had in mind. The reason for refusal was either unacceptably imprecise or this was new evidence to the inquiry.
21. In his evidence the witness insisted that the historic floor plan survived, despite HE's finding to the contrary. He relied on plans of the current layout of modern partitions in the front range and appeared to base his evidence on a misreading of the list entry and a failure to understand the provisions of s.7 and s.1(5A) of the PLBCA. The unjustified reliance on the existence of partitions of no heritage value misled the witness into an unsubstantiated assertion that in this respect the historic plan form would be lost. Similarly, the heritage value of the rear range, and the relationship between front and rear ranges, has already been clearly compromised by the addition of a first floor and partitioning. The site visit revealed the reality of HE's list description. The loss of historic fabric referred to 2 small panels below windows in the rear elevation. The site inspection showed these to be modern work, albeit using original brick, of no heritage value or significance.
22. In failing to produce evidence and making inaccurate assertions about the proposal's impact, unsupported by site inspection or objective analysis, the Council could not substantiate these reasons for refusal.

PA reason 2: amenity of neighbours

23. This reason refers to neighbouring residential properties, including 40 Clapham Manor Street. In its evidence the Council concentrated on 1-4 Knowles Walk. While these are neighbouring properties, there was no specific indication in the PAC minutes that the impact on these properties was of concern to Members. The reason for refusal was imprecise and the appellants could not be aware of the particular objection. The Council effectively introduced a new reason for refusal. When the appellants did become aware of it, following the Council's statement of

case, they put forward an amendment to the scheme. At the inquiry the Council confirmed that this amendment would overcome its objections. Had the reason been more precise this matter could have been resolved earlier and would not have been an issue at the inquiry. In the event it was readily dealt with by condition.

24. As regards 40 Clapham Manor Street, the Council's single paragraph in evidence merely asserts that the proposed rear extension would only further contribute to the already existing sense of enclosure. While higher walls would be visible, and the sense of enclosure marginally increased, the Council makes no assessment as to how this would result in unacceptable living conditions. The Council failed to produce evidence to substantiate its objection.
25. At the inquiry the Council referred to LLP policy Q14, which relates to development on gardens and backland sites. This policy was not referenced in Members discussions or the reason for refusal and was not included in the Council's questionnaire bundle. This was new evidence. Despite past historical layouts, there was nothing to show convincingly that the rear service yard should now be regarded as a garden or backland site, in terms of what would be lost under policy Q14. The introduction of irrelevant late evidence was unjustified and unsubstantiated.
26. By introducing new evidence, failing to resolve an objection capable of being dealt with by negotiation or condition and making assertions unsupported by objective analysis, the Council could not substantiate this reason for refusal.

PA reasons 1 and 3 and LBC reasons 1 and 2: heritage arguments, planning benefits and the overall planning balance

27. Despite finding greater harm, the Council concluded that the totality of the harmful impact of the proposal on the heritage assets would be less than substantial. The proposal therefore had to be considered against Framework 134, with the harm weighed against the public benefits of the proposal. The extent of public benefits had been the subject of extensive discussions between the applicants and the officers, and public benefits were assessed in detail in the officers' PAC report. They included:
 - Economic benefits - construction jobs.
 - Social benefits - enhanced outreach work, with higher standard of teaching in local schools; enhanced quality of learning and performances; higher standards at LRBS enabling greater recruitment and more subsidised places for local children; and supporting the diversity of local recreational and leisure facilities, thereby promoting opportunities for healthy lifestyles.
 - Environmental benefits - conservation of a listed building through achieving its optimum viable use, and modernisation of the building to achieve high levels of energy efficiency and carbon reduction.
28. In undertaking the necessary balanced judgement, despite the officers' clear advice on the numerous public benefits of the proposal, Members evidently considered that there was no evidence of any significant public benefits that would result from the scheme to outweigh the less than substantial harm. In dismissing the officers' advice, Members made no attempt to reassess or verify the extent of public benefits that might be associated with the scheme in order to carry out the required balancing exercise.

29. It became apparent from the Council's statement of case that the appellants' intentions had been misinterpreted. The appellants' assertion that 'there would be no real increase in numbers' was taken as applying to the total number attending classes rather than to the undertaking not to intensify the use. While there may have been some confusion over this, it was quite clear from the PAC report that the number of classes per day had never been in dispute. Hours of use had been agreed and it was self-evident that a number of different classes for the varied range of students would take place each day. Reiteration of the current condition controlling usage would allow the number of students in the school to increase from no more than 67 to 70 at any one time. Inexplicably the Council took this to mean an increase in the number of students overall by 3, despite the clear indication in the PAC report that this increase related to the number at any one time.
30. The Council seems to have treated the cap on class size as an overall cap on numbers, assuming from this a minimal increase overall and thereby misleading itself in questioning the purpose, viability and benefit of the proposals. The statement alleges that insufficient information had been provided on viability and the impact on public benefits, but the appellants had never been asked for this information and nor was it sought before the Council's decision was made. That runs counter to the Council's own policy of always working proactively with applicants jointly to find solutions (LLP policy D2).
31. The Appellants addressed this matter in evidence. The Council initially relied on the argument that the public benefits of the proposal were minimal, limited to improvements in biodiversity and surface water run-off, reflecting Members' views that there were no significant benefits. However, at the inquiry the Council readily conceded that the proposal would also provide employment benefits and energy efficiency improvements, and would meet national and local policy objectives to improve recreational and cultural facilities, acknowledging that there would be some economic, social and environmental benefits. This alone altered the balance of the Council's case.
32. The Council then accepted that there would be further public benefits, contending that these were limited to the extent to which LRBS subsidises ballet but that neither the provision of recreational classes to adult amateurs nor the provision of places to fee-paying vocational and pre-vocational students could be considered a public benefit.
33. This argument flies in the face of all national and policy objectives to improve the health and wellbeing of the nation. It cannot seriously be argued that the acknowledged public benefits of vocational education and engagement in cultural and recreational pursuits depend on them being free of charge, and nor can it be argued that paid-for community facilities such as swimming pools, theatres, day-care centres or sports halls are not of public benefit. Whether paid for or not, these are all public benefits to the community as a whole. The Council clearly undervalued the numerous public benefits that would flow from the development.
34. In making inaccurate assertions about the proposal, unsupported by objective analysis, continuing with objections capable of being resolved, and failing to justify its stance that the harm/public benefit balance weighed against the proposal, the Council was unable to substantiate these reasons for refusal.

Conclusion

35. The appellants followed the strong advice of the Council and engaged in exhaustive pre-application negotiations over a period of 5 years. After following expert advice, the finalised scheme was recommended for approval. It was rejected out of hand by Members for reasons which do not stand up to scrutiny on their planning merits. Their decision, as a matter of judgement, could not be justified on clear planning grounds based on objective assessment against the relevant policy considerations. None of the reasons for refusal could be substantiated on appeal.
36. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

37. 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 the Council of the London Borough of Lambeth shall pay to the London Russian Ballet School and Kids Love Lambeth 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.
38. The applicant is now invited to submit to the Council of the London Borough of Lambeth, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Colin Ball

Inspector

COSTS DOCUMENTS SUBMITTED AT THE INQUIRY

- C1 Appellants' application for costs.
C2 Council's response.