

Appeal Decisions

Site visit made on 13 August 2024

by Alison Scott (BA Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2024

Appeal A Ref: APP/N5660/W/24/3340874

373 - 377 Clapham Road, Lambeth London SW9 9BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Proceed Capital against the decision of the Council of the London Borough of Lambeth.
 - The application Ref is 23/03070/VOC, dated 25 September 2023 was refused by notice dated 21 November 2023.
 - The application sought planning permission for Erection of single storey office outbuilding to the rear of the site, removal of existing elevated metal walkway at first floor level, formation of a new staircase between ground and first floor levels on the rear elevation, and various other external alterations without complying with a condition attached to planning permission Ref 23/00250/FUL, dated 5 September 2023.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in complete accordance with the approved plans and drawings listed in this decision notice, other than where those details are altered pursuant to conditions of this planning permission.
 - The reasons given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Appeal B Ref: APP/N5660/Y/24/3340873

373 Clapham Road, Lambeth, London SW9 9BT

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to vary or discharge conditions of a listed building consent.
- The appeal is made by Proceed Capital against the decision of the Council of the London Borough of Lambeth.
- The application Ref 23/03049/LB dated 25 September 2023 was refused by notice dated 21 November 2023 sought to vary condition No 2 of a listed building consent Ref 23/00251/LB granted on 30 August 2023.
- The works proposed are Variation of condition 2 of Listed Building Consent Ref. 23/00251/LB (Erection of single storey office outbuilding to the rear of the site, removal of existing elevated metal walkway at first floor level, formation of a new staircase between ground and first floor levels on the rear elevation, and various other external alterations), granted on 30.08.2023. Variation sought: To increase the area and footprint of the outbuilding.

- The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in complete accordance with the approved plans and drawings listed in this decision notice, other than where those details are altered pursuant to conditions of this planning permission.
 - The reason for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. Appeal A is dismissed.

Preliminary & Procedural Matters

2. The ability to attach a condition to seek adherence to approved plans applies to planning casework only through the Town and Country Planning Act 1990 and the ability to make a Section 73 application for minor material amendments. There is no equivalent in the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), wherein permission is granted for a specific development such that a fresh application should be sought for variations to listed building consent. Therefore, I can only consider the merits of the Section 73 appeal as part of my decision making process.
3. An application for planning permission was granted for an external office building within the garden space behind No 373 Clapham Road¹. A condition (No 2) was imposed requiring the approved development to be carried out in accordance with the approved plans. Following reconsideration of the scheme by the appellant, they subsequently applied to vary Condition 2² imposed to this approval in order to enlarge the building. This was refused by the Council and is the subject of this appeal.
4. For the purposes of clarity, in addition to the original planning application submission to the Council, the appellant submitted a listed building consent application³. Listed building consent was granted for works to the property and a condition (No 2) was imposed requiring the approved development to be carried out in accordance with the approved plans. A listed building consent⁴ application was submitted by the appellant to vary condition No 2 to correspond with the planning application and has also been refused consent by the Council.

Main Issues

5. The main issues are the effect of the proposal upon the setting of the listed building, group listed as 371 and 373 Clapham Road, and whether or not it would preserve or enhance the character or appearance of the Clapham Road Conservation Area (CA).

Reasons

Significance and special interest

6. The appeal concerns development within the rear garden of 373 Clapham Road. It is group listed with 371 and 373 Clapham Road, a statutorily Grade

¹ Application reference 23/00250/FUL approved 5 September 2023

² Application reference 23/03070/VOC refused 21 November 2023

³ Application reference 23/00251/LB approved 30 August 2023

⁴ Application reference 23/03049/LB refused 21 November 2023

II listed building (List Entry Number: 1080476) listed on 2 March 1981. In addition, the listed building is situated within the Clapham Road Conservation Area (CA). I am therefore mindful of my statutory duties in respect of Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act (the Act).

7. The significance and special interest of the listed asset derives from its historic and architectural interest. It consists of a pair of early 19th Century Georgian townhouses, three storeys with attic over a basement, built from yellow London stock brick, set back from Clapham Road. Number 373 has first floor cill band, stucco frieze, cornice and blocking course. There is a hipped slate mansard with dormer, gauged flat brick arches to sash windows with glazing bars, round-arched recesses on ground floor. The main entrance is to the side with a four-panel door with free-standing columns supporting cornice head and fanlight over. The rear elevation retains significant historic interest with its prominent bowed appearance and fenestration pattern.
8. In addition, the building is located within the Clapham Road CA and represents a linear form along Clapham Road. The significance of the CA derives from the large classically inspired Georgian villas either semi-detached or in short terraces set in spacious plots with large front gardens set back from Clapham Road behind stock brick boundaries, with long rear gardens. The CA has a residential characteristic to it and also encapsulates a sense of grandeur to its appearance.
9. The listed building has experienced changes over the years, most notably the rear garden, as together with other adjacent houses have been severed in order to erect a modern 21st Century housing development to the east. The building has also been converted from residential use some time ago and its current use is office accommodation. Because the other buildings that surround it have the appearance of residential dwellings, even though some are in commercial use, reaffirms a residential character to which the asset is experienced within.
10. Although changes have occurred to the listed asset, it is a good example of a late Georgian townhouse and from its external appearance, still retains the authentic characteristics of its original use as a dwellinghouse. The remaining part of the historic rear garden whilst not laid to grass, remains intact and is physically and functionally associated with the host building and has the characteristics of the garden of a domestic dwelling. The external walls of the listed building are of significance, including this garden space despite the fact it is not expressly referred to within the listing, the listing description is only for identification purposes. Nonetheless, the listed asset should be appreciated as a whole.

Appeal proposal and effects

11. The National Planning Policy Framework (the Framework) defines the setting of a heritage asset as the surroundings in which a heritage asset is experienced. The Framework explains that its extent is not fixed and may change as the asset and its surroundings evolve.
12. The setting of the heritage asset has been somewhat compromised by other surrounding developments although the listed building remains clearly

legible as a grand Georgian townhouse with this remaining large garden space that contributes positively to its setting. I consider the garden space also leads to an overall positive effect upon local character and distinctiveness.

13. I agree with the Council that the office building originally approved at its size would have a subservience to its appearance that would appear appropriate in context to the main building. The proposed office building would be located in broadly speaking, the same position as that already approved, at the very far end of the garden.
14. The proposed enlarged office would take on the same design aesthetics in terms of finish and height which is not in dispute by the parties, with a contemporary style. I find no reason to come to an alternative view on the matter. However, it would be materially larger in scale and massing than what has been approved by the Council, with a substantially greater footprint. Whilst intentionally designed by the appellant to remove the 'un-usable' space around its perimeter, it would now span virtually the full width of the plot in this location and deeper in size, taking on a substantially bulkier formation, whilst losing the undeveloped space either side. Consequently, it would lead to it appearing more confined. The proposed office would encompass a substantially greater area of the rear garden space with considerably less space proportionally remaining between the office and the rear of the building. Whilst it may be well contained visually within the site, it would not appear subservient to the host building within a garden that still retains its domestic characteristics and forms a significant part of the setting and special interest of the listed asset. Therefore, it would harm the setting of the listed asset.
15. The appeal site is group listed with No 371 Clapham Road. Given the close physical relationship between these buildings, the appeal site is clearly seen in the context of No 371 within its setting. I find this proposal would have some erosive effect upon its setting, compromising its historic significance.
16. I appreciate there are other outbuildings and extensions brought to my attention by the appellant to buildings within close range of the appeal site. However, the precise details of these have not been shared with me by the appellant and as is my duty, I must consider the scheme before me on its own individual merits. These things considered, I could see from my visit evidence of some degradation to local character and distinctiveness that has arisen as a consequence of these developments, and this has compromised the character and appearance of the CA. This scheme would lead to a further weakening of the integrity of the CA.
17. Overall, the proposal would not preserve the setting of the group listed heritage asset of 373 and 371 Clapham Road. In addition, the appeal property makes a positive contribution to the character and appearance of the CA and this proposal would lead to some weakening of, and therefore not preserve or enhance its special interest. It would run contrary to sections 66(1) of the Act. As it would not preserve or enhance the character or appearance of the CA as a whole, it would conflict with section 72(1) of the Act.

Public benefits and balance

18. Paragraph 205 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the conservation of designated heritage asset's (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 206 goes on to say that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
19. With reference to Paragraphs 205 and 206 of the Framework, in finding harm to the significance of designated heritage assets, the magnitude of that harm should be assessed. Given the type and scale of the proposed development, and the degree to which it impacts on the setting of the designated heritages asset, I find the category of harm in this instance to be 'less than substantial'. Paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal including, where appropriate, securing the asset's optimum viable use.
20. The Planning Practice Guidance entitled Historic Environment, advises that public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the Framework. Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit.
21. Public benefits are cited by the appellant by way of enhancements to the listed asset brought by the removal of a modern external stairs and linking bridge to the adjacent building of 375 Clapham Road, various joinery repairs to windows and replacement windows to some existing fenestration, Juliette balcony changes, repointing brickwork, and breathable render application, and repainting to areas including rainwater goods, and replacement of a modern external door. The appellant also points to the removal of signage to the frontage as a benefit to the listed asset. The independent office space would provide enlarged space to increase staff numbers in a more modern environment whilst providing flexibility, and would be located within a sustainable location supplemented by supplying cycle spaces and charging points for electric bikes. Planting and water efficiency measures and energy efficiencies at the site would also arise.
22. The removal of the metal linking bridge and staircase would better reveal the significance of the heritage asset, (including the contribution its removal would make to the heritage asset of the Grade II listed asset of 375-377 Clapham Road). Repair works and fenestration changes can better reveal the significance of the heritage asset. Nevertheless, as a sum of their parts, it would bring only a moderate degree of enhancement and that is not to say that some of these works are entirely reliant on the provision of the scheme before me, including removal of signage. Furthermore, a proposed larger office building has not brought about additional improvements to better

reveal its significance than those that have already been sited by the appellant to the smaller building.

23. Painting and rendering, joinery repairs and fenestration changes including that of a Juliette balcony, I apportion only some degree of public benefit. Removal of steel tubing, changes to access to the basement and lightwell changes would be neutral in the overall scheme of things. I apply moderate weight to the improved accessibility this building would bring to both staff and visiting members of the public. The building could accommodate increased numbers of staff members from around four to approximately ten, and the benefits of this can be seen to be an economic benefit that would be a public benefit and I apportion some small degree of weight to this. However, there is no substantial information before me to demonstrate that the smaller building is unviable and as a consequence of a larger external office, would secure the building's optimum viable use as an office. The site is located in a sustainable location with cycle parking proposed which I apply a limited level of weight to. There are limited details of planting proposed, water efficiency measures and energy efficiencies to improve carbon emissions. Therefore, these sustainability credentials considered, I apportion it only limited weight as a public benefit.
24. Overall, the weight that I would ascribe to the public benefits that would accrue from the proposal is not sufficient to outweigh the considerable importance and weight that I attach to the harm I have found. I am not persuaded there is clear and convincing justification for the identified harm to the setting of the heritage asset, or to the setting of the adjacent heritage asset of 371 Clapham Road. Nor would it preserve or enhance the character or appearance of the CA.
25. Therefore, to conclude on this main issue, the proposal would not preserve the setting of the listed building or preserve the setting of the adjacent heritage asset, or preserve or enhance the character or appearance of the CA. This would be contrary to the requirements of the Act and Policies Q5, Q7, Q20 and Q22 of the Lambeth Local Plan and the broad design aims of the Lambeth Design Guide. It would run contrary to the heritage protection aims and design objectives of the National Planning Policy Framework.

Other Matters

26. An absence of objection to the proposal from local residents or other neighbours is neutral in the overall scheme of things and neither weighs for or against it, and neither are no comments received to the proposal from Historic England.
27. The appellant raises concerns regarding the Council's assessment of the proposal given they comment no site visit was undertaken. Any complaints regarding the Council's service should be directed to them in the first instance and is not within my jurisdiction to comment upon.

Conclusion

28. The proposed development would conflict with the development plan. There are no material considerations which indicate that the decision should be

made other than in accordance with the development plan. Therefore, for the reasons given, Appeal A is dismissed.

Alison Scott

INSPECTOR