

Date: **21/11/2024**  
Your ref: **APP/X5210/X/24/3351948**  
Our ref: 2024/2186/INVALID and 2024/2187/INVALID  
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Dear Adewale Ajibade

### **Appeal by T&CPP Limited**

#### **Site: 38-40 Windmill Street, London, W1T 2BE**

This presents the council's statement regarding the above appeal against the non-determination of Certificates of Lawfulness (Proposed), both withdrawn by Council on 11<sup>th</sup> July 2024 (Refs: 2024/2186/INVALID and 2024/2187/INVALID) for; Siting of a shipping container, for use incidental to the lawful residential use of the land, at the fourth-floor level (Ref: 2024/2186/INVALID) and, Siting of a caravan for use, incidental to the lawful residential use of the land, at the fourth floor (Ref: 2024/2187/INVALID).

The council determined that these two applications (Refs: 2024/2186/INVALID and 2024/2187/INVALID) for the site were Invalid as the required application fee had not been paid to the Council. As such, these applications were subsequently withdrawn by Council.

Two subsequent Certificate of Lawfulness (Proposed) applications (Refs: 2024/3476/P and 2024/3551/P) were refused by Council on 22<sup>nd</sup> October 2024. These two refused applications, 2024/3476/P and 2024/3551/P had similar descriptions as the withdrawn applications 2024/2186/INVALID and 2024/2187/INVALID:

- 2024/3476/P - Siting of a shipping container, for use incidental to the lawful residential use of the land, at the fourth-floor level.
- 2024/3551/P - Siting of a caravan, as shown in the accompanying plans, for use incidental to the lawful residential use of the land, at the fourth floor.

Certificate of Lawfulness (Proposed) was refused by Council on 3<sup>rd</sup> May 2024 (Ref: 2024/0862/P), for; Siting of a shipping container, for use incidental to the lawful residential

use of the land, at the fourth-floor level. This refusal is subject to an appeal (Ref: APP/X5210/X/24/3345029) which has not yet been determined.

The appeal is against non-determination. However, the Council's recommendation would have been to refuse Certificate of Lawfulness (Proposed). The Council's case is set out in detail in the attached Officer's Delegated Reports for 2024/3476/P and 2024/3551/P, and it will be relied on as the principal Statement of Case. The reports detail the application site and surroundings, the site history and an assessment of the proposal. In addition to this report I would be pleased if the Inspector could also take into account the following information and comments before deciding the appeal.

## **1.0 Summary**

The Council's case is set out in detail in the attached Officer's Delegated Reports, and it will be relied on as the principal Statement of Case. The report details the application site and surroundings, the site history and an assessment of the proposal. In addition to the information sent with the questionnaire, I would be pleased if the Inspector could also take into account the following information and comments before deciding the appeal.

### **Site and designations**

- 1.1 The application site accommodates a six-storey building (plus basement level) located on the northern side of Windmill Street. The property located with the Charlotte's Street Conservation Area, and the host building is not described as either a positive or negative contributor.
- 1.2 The building is understood to have retail space at ground floor level with vacant B8 (Storage or distribution) space on the first and second floors, and office space at the third floor. The existing ground floor retail unit is understood to be vacant.
- 1.3 The fourth and fifth floors are each occupied by a flat. The fourth floor includes a roof terrace at the front elevation.
- 1.4 The application material for both withdrawn applications 2024/2186/INVALID and 2024/2187/INVALID include a Proposed Fourth Floor Plan (see Figure 1 below), and elevations of the proposed shipping container. The shipping container measures approximately 2.44m wide, 9.12m in length, and 2.59m in height.

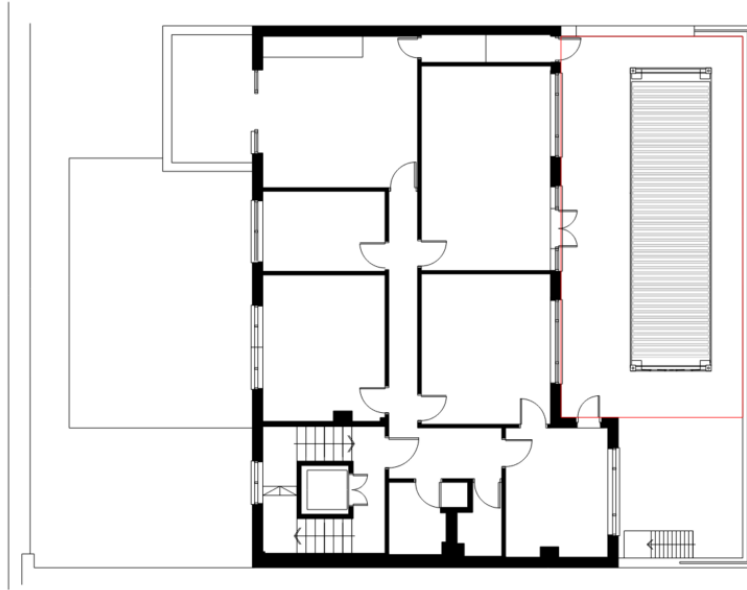


Figure 1: Fourth floor plan of existing building. The rooftop terrace is hatched in red.

## History

### Application site:

1.5 Certificate of Lawfulness (Proposed) was granted on 12<sup>th</sup> January 2024 (ref. 2023/4907/P), for; Siting of a caravan for use, incidental to the lawful residential use of the land, at the fourth floor.

1.6 The reason for the decision is outlined as follows:

*The use of the terrace for purposes incidental to the dwelling is lawful. However, this includes no determination of lawfulness as to any future physical structure that may accommodate that use.*

1.7 Certificate of Lawfulness (Proposed) was refused on 3<sup>rd</sup> May 2024 (ref. 2024/0862/P), for; Siting of a shipping container, for use incidental to the lawful residential use of the land, at the fourth-floor level.

1.8 The reason for the decision is outlined as follows:

*The proposed siting of the shipping container would be a building operation and so would meet the definition of 'development' under the Town and Country Planning Act 1990, section 55. It does not benefit from any planning permission and would therefore not be lawful.*

## **Current appeal**

1.9 The Council's case for this current appeal is set out in detail in the attached Officer's Reports for 2024/3476/P and 2024/3551/P and appendices 1-7, and it will be relied on as the principal Statement of Case. The Officer's reports details the application site and surroundings, the site history and an assessment of the proposal.

## **3. Grounds of appeal**

1.10 The Appellant has appealed against the refusals of the Certificates of Lawfulness (Proposed). The Appellant's agent, Graham Lea of Town & Country Planning Partnership Ltd., submitted Appeal Statements dated 13/09/2024.

1.11 In order to respond to the appellant's grounds of appeal, I will seek to summarise and break down the issues raised by the appellant's agent in the same order they have been raised.

## **3. Comments on grounds of appeal**

3.1 The appellant's statement is summarised in italics and addressed below:

*Appeal statement APP/X5210/X/24/3351952 (for application ref. 2024/2187/INVALID)*

*The proposed shipping container subject of this appeal is a moveable structure and not a building that would constitute operational development that would need planning permission to be sited within the red line edged accompanying the application that is now the subject of this appeal. An identical container with a few tables and chairs in it would constitute a caravan which is not a building. By removing those tables and chairs the same with the same specifications would not magically become a building.*

*Appeal statement APP/X5210/X/24/3351948 (for application ref. 2024/2186/INVALID)*

*The caravan compliant container shown in the drawing accompanying the application now subject of this appeal meets the definition of a caravan set out in the 1960 and 1968 Caravan Acts and as such can be sited on the land under consent ref 2023/4907/P relating to the siting of a caravan for use ancillary to the lawful residential use of the site.*

### **Response:**

Building operations are defined by s55(1A) of the Town and Country Planning Act 1990 to include "demolition of buildings, rebuilding, structural alterations of or additions to buildings, and other operations normally undertaken by a person carrying on business as a builder", although it is not intended to be an exhaustive list.

"Building" is defined by s.336 of the 1990 Act as including "any structure or erection" and so can include items which would not ordinarily be described as a building.

The approach of the courts in construing the definitions has been to ask first whether what has been done has resulted in the erection of a “building”, and secondly whether the method of erecting the “building” was a building operation.

If the structure or erection can be said to be a “building”, the courts have held that it would need a great deal of persuading that the erection of it would not amount to a building operation and therefore development.

In determining whether there is a building, the *Cardiff Rating Authority* test must be applied, as endorsed by the Court of Appeal in *Skerritts*. [\*Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions \(No.2\) \[2000\] 2 P.L.R. 102.\*](#)

As identified in the Officer’s Report, this test involves considering the size, permanence and degree of physical attachment to the land.

At more than 9m long, almost 2.5m across, and more than 2.5m in height, the container would be a substantial structure with volume in excess of 56 cubic metres. It would require assembly and construction on site, or otherwise significant large equipment and logistics to put into place (and this is not even considering any requirements that may or may not exist to prepare the terrace for its siting, connection to any utilities, or fixing it in place). The substantial size in its context, and permanence of the shipping container, means it is a building and constitutes a “building operation”.

With regards to appeal decisions refs. APP/V0728/W/23/3314720 and APP/U2370/C/19/3236326, the circumstances of these cases are clearly different. It related to containers for self-storage on a large open area of land with industrial or agricultural character. Information was provided in these cases around fixings and utilities and so on.

In appeal case 3314720, the Inspector also considered they could be quickly and easily removed by crane and lorry, without the same complexities afforded on this site on an upper floor of a building in a dense urban area. In appeal case 3236326, the container had wheels and therefore could also be easily moved off the site.

Adding a large container in this urban context clearly has a very different character and the shipping container would not be easily moveable and would essentially be fixed in place.

Appeal decisions APP/W1850/X/11/216/4822, APP/D1590/C/20/3247457, APP/W1525/W/20/3245635, and APP/J0405/C/22/3291112, all for storage/shipping containers, are also relevant. In addition to the considerations identified in the officer’s report, other considerations as mentioned in these appeal decisions include the fact that while the container could potentially be transported, its size and the logistics of moving the container on a site such as this means that it is unlikely to be relocated, and there is no limit on the length of time it would remain there, it could be present on site for a number of years. Also, even if the container was not physically attached to the land, its weight is sufficient to signify a form of affixation, as the container would be anchored to the ground by its own weight.

None of the three tests on their own need be determinative and it is a matter of fact and degree in each case. Considering all the tests together in this particular case, it is clear the overall character of the structure is of a building, and this is how Council interprets it. The Skerritts case is clear that character can relate to all three.

Turning to the applicant's assertion that the shipping container meets the definition of a "caravan", Section 29 of the Caravan Sites Act 1968 states that the structure must be physically capable of being moved from one place to another by road and that the twin unit must be no more than 20 metres long, 6.80 metres wide and the living accommodation no more than 3.096 metres high.

A structure that may, on the face of it, comply with the definition of "caravan" is still capable of constituting operational development under the Planning Act. In *Measor v SSETR & Tunbridge Wells DC* [1999] JPL 182 the Judge expressed caution in holding that a structure that met the S29(1) / S13(1) definition of a "caravan" could never be operational development for the purposes of planning law.

Although the use of the terrace for a purpose incidental to the enjoyment of the residential unit would not be development (by virtue of S55(2)(d) of the Planning Act), this does not mean that a caravan could in fact be sited there in principle (unless it was not operational development assessed under the tests set out in *Skerritts*, as discussed above).

The definition of "caravan" only applies "unless the context otherwise requires". The context in this case is a roof in central London. This context is clearly not consistent with the intended legal or normal everyday definition of a "caravan".

Therefore, the works for siting the container at roof level on this particular building constitute "building operations", and so it will fall within the scope of s55.

The shipping container clearly materially affects the external appearance of the building, so is not within the exclusions to development set out in s55.

The proposed siting of the shipping container at the roof of the building, therefore constitutes "development" and it requires permission.

#### **4. Conclusion**

Having regard to the entirety of the Council's submissions, including the content of this letter, the Inspector is respectfully requested to dismiss the appeal.

If any further clarification of the appeal submissions are required, please do not hesitate to contact Brendan Versluys on the above direct dial number or email address.

Brendan Versluys

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## **Appendix**

- Appendix 1: Copy of delegated reports and decisions
- Appendix 2: Appeal decision 3314720
- Appendix 3: Appeal decision 3236326
- Appendix 4: Appeal decision 2164822
- Appendix 5: Appeal decision 3247457
- Appendix 6: Appeal decision 3245635
- Appendix 7: Appeal decision 3291112