

LDC (Proposed) Report		Application number	2024/3476/P
Officer		Expiry date	
Brendan Versluys		22/10/2024	
Application Address		Authorised Officer Signature	
38 - 40 Windmill Street London W1T 2BE			
Conservation Area		Article 4	
Charlotte Street		Article 4 Direction (basements) Article 4 Direction (land use)	
Proposal			
Siting of a shipping container, for use incidental to the lawful residential use of the land, at the fourth-floor level.			
Recommendation:	Refuse Certificate of Lawfulness		
<p>Introduction</p> <p>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.</p> <p>The officer's report for planning application 2016/0397/P describes the building as having 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.</p> <p>The fourth and fifth floors are each occupied by a flat. The fourth floor includes a roof terrace at the front elevation.</p> <p>An image of the application site as viewed from the intersection of Whitfield Street and Windmill Street is included in Figure 1 below.</p> <p>Proposal</p> <p>The applicant seeks a certificate of lawfulness for the siting of a shipping container at the fourth floor, on the terrace. It would be used for residential purposes, claimed to be incidental to the use of the existing fourth floor flat.</p> <p>The shipping container would be located on the fourth-floor terrace and would be accessed from the fourth floor flat.</p>			



Figure 1: The application site (centre) as viewed from the intersection of Whitfield Street and Windmill Street. The proposed caravan would be set behind the frosted glass balustrade.

Relevant planning history:

2010/5167/P - Change of use of third floor offices (class B1a) and vacant first and second floors (Class B8) to create 6x two-bedroom flats (class C3), including rear extensions at first, second, third and fourth floors and associated external alterations. **Granted Subject to a Section 106 Legal Agreement 05/05/2011.**

2016/0397/P - Change of use of third floor offices (class B1a) and vacant first and second floors (Class B8) to create 3x three bedroom flats. **Granted Subject to a Section 106 Legal Agreement 22/06/2017.**

2023/4907/P - Siting of a caravan for use, incidental to the lawful residential use of the land, at the fourth floor. **Granted 12/01/2024**

This certificate was relating to the use of the land for stationing a “caravan”. The decision notice made clear that the use of the terrace for purposes incidental to the dwelling is lawful. However, it went on to state that it *“includes no determination of lawfulness as to any future physical structure that may accommodate that use”*.

2024/0862/P - Siting of a shipping container, for use incidental to the lawful residential use of the land, at the fourth-floor level. **Refused 3/05/2024**

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. **Under consideration**

Assessment:

The certificate is submitted on the basis that putting the container on the roof, without a change of use, does not constitute development and so does not require planning permission.

The definition of 'development' is defined by the Town and Country Planning Act 1990, section 55, as follows:

Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

The scope of "development" is therefore broadly split into two limbs – operational development, and material changes of use. The terms of the certificate application are clear that it relates to the physical structure. It is therefore the first limb – operational development – that is relevant to this certificate.

In the High Court case of Skerritts of Nottingham Ltd v Secretary of State for Environment, Transport & Regions & Anor [2000], the Court endorsed the approach in Barvis v Secretary of State for the Environment [1971] in setting out the three-fold test for a building (resulting from a building operation): size, permanence, and attachment to land. This case emphasises that the consideration of permanence is a highly material factor when deciding whether a structure constitutes a building operation.

The onus of proof in a LDC application is firmly on the applicant to demonstrate on the balance of probabilities, to show that operations specified in the application are lawful. The applicant has provided minimal evidence to demonstrate the lawfulness of the container, with the only evidence provided being a site plan, and floor plan and very basic elevations of the shipping container. There are no drawings or documentation showing the container sited in context, its proposed physical relationship to the existing building, or showing the presence or lack of any fixings or connections.

Despite the lack of information to support the application, at more than 12.5m long, almost 3m across, and more than 3m in height, the container would be a substantial structure with volume in excess of 113 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".

The applicant later provided an appeal decision for reference (APP/V0728/W/23/3314720). The circumstances of that case are clearly different. It related to containers for self-storage on a large open area of land with industrial character. Information was provided in that case around fixings and utilities and so on. 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. Adding a large container in this urban context clearly has a very different character.

None of the three tests on their own need be determinative and it is a matter of fact and degree in each case – something acknowledged in the cited appeal. 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 a normal person would interpret it. The *Skerritts* case is clear that character can relate to all three parts of the three-fold test.

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.

There is no express planning permission for the development, and it does not benefit from permission granted by a development order (the GDPO for example).

As such, planning permission is required, has not been granted, and so the lawful development certificate must be refused.

As was made clear on the decision for the previously granted certificate, use of the terrace, and any **lawful** structures that may be provided on it, for residential purposes incidental to the flat to which it relates would be lawful.

3. Recommendations

3.1. Refuse Lawful Development Certificate for the following reason:

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.

Application ref: 2024/3476/P
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Date: 22 October 2024

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Graham Lea
The Sanctuary, Wrotham Hill Cottage, Wrotham Hill,
Dunsfold, Nr Godalming, Surrey
GU8 4PA

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990, Section 191 and 192

Certificate of Lawfulness (Proposed) Refused

Address:
38-40 Windmill St
London
W1T 2BE

Proposal:
Siting of a shipping container, for use incidental to the lawful residential use of the land, at the fourth-floor level.

Drawing Nos: NW/00; 24/3820; 24/3821;

The Council has considered your application and decided to **refuse** a certificate of lawfulness for the following reason:

Reason(s) for Refusal

- 1 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.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with the National Planning Policy Framework. The council publishes its adopted policies online, along with detailed Camden Planning Guidance. It also provides advice on the website for submitting applications and offers a pre-application advice service.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully

A handwritten signature in black ink, appearing to read 'DPope', is positioned above the printed name and title.

Daniel Pope
Chief Planning Officer

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Proposal			
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.			
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<p>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.</p> <p>The officer's report for planning application 2016/0397/P describes the building as having 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.</p> <p>The fourth and fifth floors are each occupied by a flat. The fourth floor includes a roof terrace at the front elevation.</p> <p>An image of the application site as viewed from the intersection of Whitfield Street and Windmill Street is included in Figure 1 below.</p>			
Proposal			
<p>The applicant seeks a certificate of lawfulness for the siting of a shipping container (referred to in the application description as a 'caravan') at the fourth floor, on the terrace. It would be used for residential purposes, claimed to be incidental to the use of the existing fourth floor flat.</p> <p>The shipping container would be located on the fourth-floor terrace and would be accessed from the fourth floor flat.</p>			



Figure 1: The application site (centre) as viewed from the intersection of Whitfield Street and Windmill Street. The proposed caravan would be set behind the frosted glass balustrade.

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2024/3476/P - Siting of a shipping container, for use incidental to the lawful residential use of the land, at the fourth-floor level. **Under consideration**

Assessment:

The certificate is submitted on the basis that putting the container (or “caravan”) on the roof, without a change of use, does not constitute development and so does not require planning permission.

The definition of a caravan in law is defined by the Caravan Sites and Control of Development Act 1960, Section 29, as follows:

unless the context otherwise requires — “caravan” means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include -

- (a) any railway rolling stock which is for the time being on rails forming part of a railway system, or*
- (b) any tent.*

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 *Skerrits*). As assessed further below, the shipping container, even if it were considered to meet the definition of a “caravan”, is considered ‘operational development’ and does not meet the definition of a caravan.

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” and the legal definitions should be considered in that context.

The definition of ‘development’ is defined by the Town and Country Planning Act 1990, section 55, as follows:

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and material changes of use. The terms of the certificate application are clear that it relates to the physical structure. It is therefore the first limb – operational development – that is relevant to this certificate.

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The onus of proof in a LDC application is firmly on the applicant to demonstrate on the balance of probabilities, to show that operations specified in the application are lawful. The applicant has provided minimal evidence to demonstrate the lawfulness of the container, with the only evidence provided being a site plan, and floor plan and very basic elevations of a shipping container. There are no drawings or documentation showing the container sited in context, its proposed physical relationship to the existing building, or showing the presence or lack of any fixings or connections.

Despite the lack of information to support the application, at more than 12.5m long, almost 3m across, and more than 3m in height, the container would be a substantial structure with volume in excess of 113 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”.

The applicant has cited an appeal decision for a self-storage facility, reference (APP/V0728/W/23/3314720). The circumstances of that case are clearly different. It related to containers for self-storage on a large open area of land with industrial character. Information was provided in that case around fixings and utilities and so on. 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. Adding a large container in this urban context clearly has a very different character.

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There is no express planning permission for the development, and it does not benefit from permission granted by a development order (the GDPO for example).

As such, planning permission is required, has not been granted, and so the lawful development

certificate must be refused.

As was made clear on the decision for the previously granted certificate, use of the terrace, and any **lawful** structures that may be provided on it, for residential purposes incidental to the flat to which it relates would be lawful. However, there is no information on the use of the building/container, so it cannot be determined whether the shipping container would also constitute a material change of use from the existing Class C3 use.

3. Recommendations

3.1. Refuse Lawful Development Certificate for the following reason:

The proposed siting of the shipping container (referred to by the applicant as a “caravan”) 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.

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Dear Sir/Madam

DECISION

Town and Country Planning Act 1990, Section 191 and 192

Certificate of Lawfulness (Proposed) Refused

Address:
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Proposal:
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.

Drawing Nos: NW/00, 7/09/23; NW/001; NW/00, 6/09/23

The Council has considered your application and decided to **refuse** a certificate of lawfulness for the following reason:

Reason(s) for Refusal

- 1 The proposed siting of the shipping container (referred to by the applicant as a "caravan") 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.

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Daniel Pope
Chief Planning Officer