

Date: **17/03/2025**
Your ref: **APP/X5210/X/24/3358238 and 3358455**
Our ref: 2024/3476/P and 2024/3551/P
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Dear Faiza

Appeal by T&CPP Limited 2024/3551 / 3358455 statement due 18/3/25
Appeal by T&CPP Limited 2024/3476 / 3358238 statement due 20/3/25

Site: 38-40 Windmill Street, W1T 2BE

This presents the council's statement regarding 2 appeals. These appeals are against:

- On 22nd October 2024 a Certificate of Lawfulness (Proposed), (Ref: and 2024/3551/P) was refused for; Siting of a caravan, for use incidental to the lawful residential use of the land, at the fourth-floor level.

Reason for refusal:

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.

- On 22nd October 2024 a Certificate of Lawfulness (Proposed) (Ref. 2024/3476/P) was refused for Siting of a shipping container, as shown in the accompanying plans, for use incidental to the lawful residential use of the land, at the fourth floor (Ref. 2024/3551/P).

Reason for refusal:

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.

This joint appeal statement is submitted for the two appeals as the refused Certificates of Lawfulness (Proposed) relate to very similar proposed works on the same site.

There are 3 other active appeals at the site which are outlined further below and in the history section of the reports. All of the appeals relate to refused Certificates of Lawfulness (Proposed) for the siting of a shipping container on the roof of the building at the application site, with each of the descriptions of development having slightly different wording but with no material effect. None of the appeals have been determined.

1.0 Summary

The Council's case is set out in detail in the 2 attached Officer's Delegated Reports, and these will be relied on as the principal Statement of Case. The reports 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 refused applications 2024/3476/P 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. The application material for 2024/3551/P did not include a proposed fourth floor plan and included elevations and a floor plan of the shipping container only.

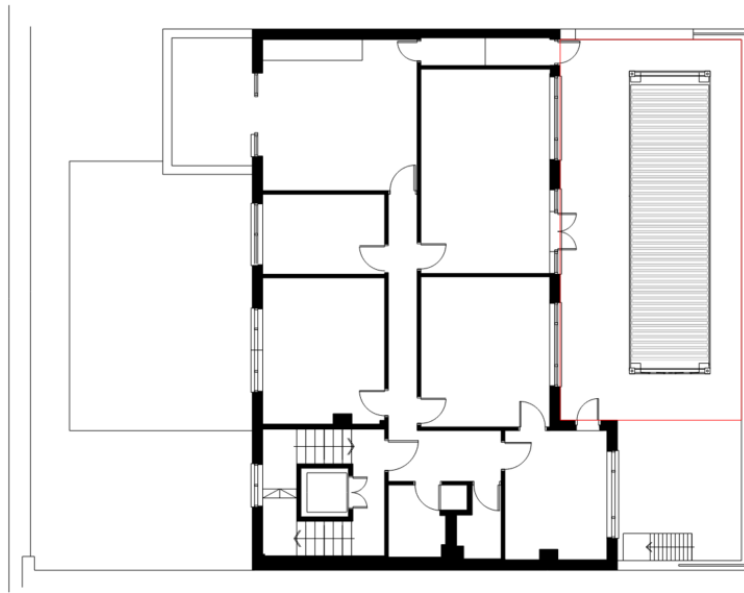


Figure 1: Fourth floor plan of existing building with the proposed shipping container. The rooftop terrace is hatched in red.

2.0 Other certificates of lawfulness applications regarding the site

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

2.2 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

The following are awaiting appeal decisions

2.3 On 3rd May 2024 a Certificate of Lawfulness (Proposed) was refused (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.

2.4 The council determined that two subsequent Certificate of Lawfulness (Proposed) applications (Refs: 2024/2186/INVALID and 2024/2187/INVALID) for shipping containers on the roof of the building at 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 on 11/07/2024. Nevertheless, the applications were subsequently appealed (Ref: APP/X5210/X/24/3345029 and APP/X5210/X/24/3351952, under APP/X5210/X/24/3351948), statements were submitted and PINs decisions are awaited.

3.0 Grounds of appeal

- 3.1 The Appellant's agent, Graham Lea of Town & Country Planning Partnership Ltd., submitted Appeal Statements received 21/02/2025 and are undated. The statements for both appeals are identical

4.0 Comments on grounds of appeal

- 4.1 The appellant's statement is summarised in the paragraph below in italics and is addressed beneath:

The stationing of a shipping container for use ancillary to the lawful residential use of the site edged red on the accompanying plan would not constitute development for when planning permission would be required.

A shipping container is not a building. See attached Appeal Decision ref 1814012.

Council Response:

- 4.2 The following has been discussed with the council's legal officers.
- 4.3 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.
- 4.4 "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.
- 4.5 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.
- 4.6 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.
- 4.7 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.*](#)
- 4.8 As identified in the Officer's Report, this test involves considering the size, permanence and degree of physical attachment to the land.
- 4.9 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".

Appeal 1814012

- 4.10 Appeal case 1814012 cited by the appellant relates to consideration of whether CIL is payable for shipping containers and therefore has limited bearing to this appeal against a refusal for a Certificate of Lawfulness (Proposed). In this decision the Inspector also considered the containers were designed for taking on and off the site with relative ease, without the same complexities afforded on this site on an upper floor of a building in a dense urban area. Further, the appellant for 1814012 case argued that a storage container is a functional item, used for transporting and moving goods. In this case, the shipping container would not be used for transporting and moving goods, and is designed as habitable accommodation ancillary to the fourth floor flat.
- 4.11 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.

Other relevant appeal decisions

- 4.12 Various appeal decisions are referred to in the earlier, active appeals for shipping containers at the site, and are referred to again below as a reference and their discussions remains applicable to this appeal statement.
- 4.13 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.
- 4.14 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.
- 4.15 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.
- 4.16 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.

Definition of caravan

- 4.17 *The applicant has asserted in his other application and appeal submissions that the shipping container meets the definition of a “caravan”.*

Council response

- 4.18 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.
- 4.19 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.
- 4.20 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 discussed above).
- 4.21 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”.
- 4.22 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.
- 4.23 The shipping container clearly materially affects the external appearance of the building, so is not within the exclusions to development set out in s55.
- 4.24 The proposed siting of the shipping container at the roof of the building, therefore constitutes “development” and it requires permission.

5.0 Conclusion

- 5.1 The proposed siting of the shipping container at the roof of the building, therefore constitutes “development” and it requires permission.
- 5.2 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.

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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