



Appeal Decision

Site visit made on 4 June 2025

by **C Rafferty LLB(Hons), Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 26 June 2025

Appeal Ref: APP/X5990/C/24/3341079

31 Clifton Gardens, London W9 1AR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Harvey Shapiro (Urbanpeak Ltd) against an enforcement notice issued by City of Westminster Council.
 - The notice was issued on 15 March 2024.
 - The breach of planning control as alleged in the notice is, without the requisite planning permission and within the last 4 years, the installation of a timber bin enclosure structure, and associated bolt-down metal post shoe brackets within the front garden of the Property, as shown outlined in red in Photographs A and B ("the Unauthorised Works").
 - The requirements of the notice are to:
 - a) Remove the timber bin enclosure structure, the associated bolt-down metal post shoe brackets, and any associated fixtures and fittings as shown in Photographs A and B; and
 - b) Make good any damage caused by the installation/ removal of the timber bin enclosure structure and the associated bolt-down metal post shoe brackets, using materials and detailing to match the existing appearance and materials.
 - The period for compliance with the requirements is: three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appeal was brought on ground (b) only. However, the Council outlined that arguments made in the appeal submission amounted to an appeal on ground (c). The appellant confirmed that the appeal should also proceed on ground (c).
3. Evidence has been submitted relating to planning merits. However, no appeal has been brought on ground (a), nor has the relevant fee for such an appeal been paid.

Appeal on ground (b)

4. An appeal on ground (b) is brought on the basis that the alleged breach of planning control stated in the notice has not occurred as a matter of fact.
5. The breach of planning control outlined in the enforcement notice is the installation of a timber bin enclosure structure, and associated bolt-down metal post shoe brackets within the front garden of the Property. Photographs are attached to the notice, showing these features within the garden. The photographs are date stamped 30 November 2021 which pre-dates the issue of the enforcement notice. During my site visit, I observed the same. It is clear therefore that the installation of the timber enclosure and metal brackets as alleged in the notice took place as a matter of fact.

6. For the reasons given, the appeal on ground (b) fails.

Appeal on ground (c)

7. An appeal on ground (c) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, that those matters do not constitute a breach of planning control.
8. It is outlined in s171A(1) of the Act that carrying out development without the required planning permission constitutes a breach of planning control. However, the appellant alleges that the Unauthorised Works as described in the notice do not constitute development. Development is defined in s55(1) of the Act as including the carrying out of building, operations in, on, over or under land.
9. Case law has established that building operations comprise activities which result in some physical alteration to the land which has some degree of permanence. In this regard, three primary factors, or tests, are relevant to whether operations amount to development. They are size, permanence, and physical attachment. No single factor is decisive, and any judgement will be a matter of fact and degree based upon the specific circumstances of the case.
10. In terms of its size, the timber enclosure runs along much of the front width of the appeal site and rises above the boundary wall to be visible from Clifton Gardens. As such, despite its limited depth and slatted nature, it remains a notable and prominent feature at the site due to its overall dimensions.
11. The evidence before me suggests that a timber enclosure has been present in this position since at least 2021, albeit that it was reduced in height at some point that year. While I have no evidence as to what the enclosure weighs, it is held in place by its own weight and, although moveable, I observed that it would reasonably require more than one person to safely manoeuvre it. There is no evidence to show that the enclosure has been moved since its first placement at the site or that there is any intention to do so. It appears to be a bespoke feature made to fit the current position, running along the boundary wall with side projections to screen the bin storage at this part of the site. Indeed, given its use to screen these bins its positioning is for all practical intents and purposes fixed, as it would not serve its intended purpose if moved from the present position. Overall, I therefore find there to be a degree of permanence to the enclosure.
12. The timber screens sit in metal shoe brackets, but during my visit I observed that these were not attached to the ground. It does not appear that this has always been the case, with holes in the brackets aligning to holes in the ground, and evidence of rusting where affixing would likely have taken place. This corresponds with the evidence supplied by the Council, which refers to an email from a management company suggesting “removing the bolts attaching it to the ground, such that it would no longer be considered development under the 1990 Act”. On this basis, it appears that the current lack of attachment is not indicative of an intention to make the enclosure genuinely movable. Nevertheless, it remains that a lack of physical attachment is not, itself, decisive.
13. Taking all of the above together, I find that the installation of a timber bin enclosure structure, and associated bolt-down metal post shoe brackets as alleged in the enforcement notice constitutes development for which there is no grant of planning

permission and therefore the matters as alleged in the notice constitute a breach of planning control.

14. For the reasons given, the appeal on ground (c) fails.

Overall Conclusion

15. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

C Rafferty

INSPECTOR