



Appeal Decisions

Site visit made on 19 November 2025

by **Andy Harwood CMS MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 December 2025

Appeal A Ref: APP/X5990/W/24/3355530

Ground Floor Flat, 41 Fifth Avenue, London W10 4DL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant planning permission.
- The appeal is made by Mrs E Bengue against City of Westminster Council.
- The application Ref is 24/02912/FULL.
- The development proposed is described as the erection of an outbuilding with green roof in the rear garden (Retrospective).

Appeal B Ref: APP/X5990/C/24/3355727

Ground Floor Flat, 41 Fifth Avenue, London W10 4DL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act) by Mrs E Bengue against an enforcement notice issued by City of Westminster Council.
- The notice was issued on 16 October 2024.
- The breach of planning control as alleged in the notice is: Without planning permission and within the last 4 years, the erection of an outbuilding in the rear garden of the property, as shown outlined in red in Photographs 'A' and 'B' and the location of which is shaded red in 'Garden Plan 1' attached.
- The requirements of the notice are to:
 - 1) Remove the outbuilding from the rear garden of the property as shown outlined in red in Photographs 'A' and 'B' and the location of which is shaded red in 'Garden Plan 1' attached; and
 - 2) Remove any waste material or debris from the land resulting from compliance with any of the requirements of this notice.
- The period for compliance with the requirements is: Six months.
- The appeal is proceeding on the ground set out in section 174(2) (g) of the Town and Country Planning Act 1990 (as amended).

Appeal A Decision

1. The appeal is allowed and planning permission is granted for the erection of an outbuilding with green roof in the rear garden (Retrospective) at Ground Floor Flat, 41 Fifth Avenue, London W10 4DL in accordance with the terms of the application, Ref 24/02912/FULL and the plans submitted with it subject to the following condition:

The roof area of the outbuilding hereby permitted shall not be used as a balcony, roof garden or similar amenity area'.

Appeal B Decision

2. The appeal is dismissed.

Preliminary Matters

3. Ground (a) was pleaded in appeal B, that ground of appeal was barred given that Appeal A concerns a related application which was still to be determined.

Appeal A

Main Issue

4. The effect of the development on the character and appearance of the site and surrounding area. The site is within the Queens Park Conservation Area (the CA). In those respects, I will consider the relevant statutory duty in Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Reasons

5. The appeal site is a mid-terraced property in an area characterised by similar traditional buildings. There is a consistency in architectural style of the buildings and the materials used which is predominantly brick. These buildings have narrow rear gardens which also back onto the similarly proportioned gardens of properties at the rear. The gardens are typically defined along the boundaries, as in the case on the appeal site, with brick walls which are low enough to allow for views to side along the rear of the terrace. There are also some higher boundary structures including detached garden buildings such as within the adjoining property. A substantial number of trees and other planting in these gardens, including on the appeal site, help to soften the appearance of the gardens.
6. The unauthorised building is a modern looking structure with a large amount of glazing which faces towards the back of the building which includes the appellant's flat on the ground floor. It takes up all of the space at the rear most part of the garden and has a flat or gently sloping roof which is above the fence that has been erected behind it, between the appeal site and the property that adjoins the end of the garden. It has a sleek design which is more contemporary than some of the other garden sheds elsewhere that I could see and this modern look is emphasised by the dark-grey of the metal construction. The appellant has evidenced that there are a number of other large outbuildings some the full width of the plots, in the surrounding area.
7. I did not visit neighbouring properties but I could understand the context in which the residents nearby would see this building. From the rear and sides, it has blank grey elevations which although higher than most of the garden walls, not disproportionately so. From those vantage points it would provide stronger, higher definition of the boundary. However, that is not in a domineering way or a way that substantially detracts from the ability to appreciate the rear elements of the traditional terraces. The Council refers to other outbuildings having benefited from permitted development rights rather than requiring express planning permission but the fact remains that they exist and they affect the character of the area. The building is a modern take on a garden building which suitably contributes to the character and appearance of the rear gardens without adversely impacting upon the appreciation of the traditional terraced buildings.
8. In relation to this main issue, the development does not have an adverse effect on the character and appearance of the site and surrounding area. As such, this complies with Policy HC1 of the London Plan 2021 (LP), Policies 38 and 39 of Westminster's City Plan (April 2021) and Policy 5 of the Queen's Park Neighbourhood Plan (2021). These amongst other things require the conservation

of the significance of heritage assets and respects the character of the CA. The character and appearance of the CA would be preserved.

Other matters

9. Although queried by an interested party, there is no dispute between the main parties about the height of the building as applied for and I have dealt with the appeal on the basis of what I saw on site. The development is complete and there is no necessity for any planning conditions other than one to prevent use of the roof as a sitting out area. In that respect I am mindful that whilst there is no stated intention by the appellant to use it as such, if subsequent occupants decided to use it in that way, it would cause a harmful loss of privacy within the adjoining gardens.

Appeal A Conclusion

10. Accordingly, for the above reasons, I conclude that the proposal complies with the development plan as a whole and the appeal should succeed.

Appeal B

Ground (g)

11. The notice requires that compliance is achieved within 6 months. The building is modest in size and would require dismantling in sections or lifting out as a whole. The former option would seem the most practical method given that the site is surrounded by gardens of separately owned properties. Even if specialist contractors were required, this at face value would not seem to be a particularly demanding demolition operation. I therefore consider that 6 months would be a reasonable and proportionate period.
12. The appeal on ground (g) is dismissed.

Appeal B Conclusion

13. For the reasons given above, I conclude that appeal B should not succeed. I shall uphold the enforcement notice. Notwithstanding this, given the effect of s180(1) of the Act, the enforcement notice ceases to have effect so far as inconsistent with that permission.

Andy Harwood

INSPECTOR