



Appeal Decision

Site visit made on 25 August 2026

by **R Bartlett PGDip URP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 September 2026

Appeal Ref: APP/U5360/C/25/3368635

Flat 6, Brooks Lodge, 194A Hoxton Street, London, N1 5HU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Ms Eliza Jane Little against an enforcement notice issued by the Council of the London Borough of Hackney.
- The notice was issued on 28 May 2025.
- The breach of planning control as alleged in the notice is Without planning permission, erection of a pergola atop the roof terrace.
- The requirements of the notice are:
 1. Remove the pergola in its entirety;
 2. Make good all damage to the property resulting from the removal of the unauthorised works as listed above;
 3. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
- The period for compliance with the requirements is: 3 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Decision

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

Preliminary Matters

2. The appeal was made on grounds (a), (c), (f) and (g). However, Section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act), prevents appellants from having multiple attempts at getting planning permission for the same development within a two-year period. In this case, a planning application to retain the unauthorised works was refused prior to the notice being issued, and an appeal¹ against that decision has since been dismissed. Consequently, ground (a) has been barred and in determining this appeal, I am unable to take account of any planning merits. My consideration is therefore confined to matters relating to grounds (c), (f) and (g).

The appeal on ground (c)

3. The appeal on ground (c) is made on the basis that the matter alleged in the notice does not constitute a breach of planning control. This is a legal ground, and to succeed, the burden of proof is on the appellant.
4. Section 55(1) of the 1990 Act sets out the meaning of development, which is defined as *“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.”*

¹ Ref. APP/U5360/W/25/3366499

5. Section 55(2) of the 1990 Act sets out a list of operations or uses of land that shall not be taken to involve development. However, the works undertaken in this case do not fall within any of these exceptions.
6. The tests to consider, in determining whether something is operational development for the purposes of the 1990 Act, are size, permanence and physical attachment. These are the tests referred to in the case law quoted by the main parties, namely *Cardiff Rating Authority v Guest Keen Baldwin's Iron & Steel Co Ltd* [1949] 1 KB 385. The Council also refer to *Barvis Ltd v SSE* [1971] 3 WLUK 70, which confirmed that movable structures can constitute development.
7. The appellant states that no breach of planning control has occurred as the pergola structure sits on wheels and so is technically moveable and is not development.
8. The structure measures approximately 6 metres in length, 3 metres in width and 2.5 metres in height. It comprises six steel upright posts, which support a steel roof frame and louvred slats that can be opened and closed. The sides are open rather than solid, but have sliding fabric panels, which like the roof can be opened and closed to provide shelter from the sun, wind and rain.
9. Despite not being fully enclosed by solid fixed walls and roofing, the structure is significant in terms of its size and presence on the roof terrace. Furthermore, given the size of the structure, it is more likely than not that it would have been delivered to the site in parts and built on the roof.
10. All six upright posts of the structure are on wheels, but these are fixed in place to the base of the roof terrace by wheel covers, four of which are bolted down. As the appellant states that the structure, due to its weight, does not need to be bolted down for safety reasons, it seems to me to be more likely than not that the purpose of the bolts is to keep the structure permanently in its current position, which is adjacent to the outdoor electrical sockets.
11. Although it is undisputed that the bolts and wheel casing could be removed, enabling the structure to be wheeled into a different position on the small roof terrace, there is no evidence before me to indicate that the structure has been moved since its construction or that there would be any intention or reason to do so. Whilst only providing two snap shots in time, in the absence of any evidence to the contrary, the Google street view images submitted by the Council reinforce my view that the structure is unlikely to have been moved.
12. The appellant states that if the structure is development, that would only be as a result of the housing support around the wheels that fix it in place. It is therefore suggested that only the housing support around the wheels should be required to be removed, so that the structure is no longer physically attached and can be easily moved around.
13. Physical attachment is only one factor, and as correctly noted in the appellant's statement, none of the three primary tests for development are necessarily decisive on their own. Even if the structure was not physically attached to the floor and could be moved into a different position on the relatively small roof terrace, it would remain a substantial physical structure in terms of its size and weight and would be permanently sited on the roof terrace. As there is no evidence before me to suggest that the structure would be moved around or taken up and down, the

removal of the wheel housing would not therefore in my view result in the structure no longer constituting development.

14. I therefore consider that the pergola is development as defined by Section 55 of the 1990 Act, having regard to its size, permanence and physical attachment to the floor of the roof terrace. In reaching this view, I have had regard to the appeal decision² referred to me by the appellant. However, in that case the support legs of the jumbo umbrellas were not fixed to the ground. Furthermore, I have no details of the jumbo umbrellas, beyond those set out in the Inspector's decision. These umbrellas could presumably be put up and down, and it is unlikely that they were comparable in terms of size, weight and nature to the fixed size pergola structure in this case.
15. For the above reasons, I conclude, that on the balance of probability, the matter stated in the notice does constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

The appeal on ground (f)

16. The appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary to either (a) remedy the breach of planning control or (b) remedy any injury to amenity which has been caused by the breach.
17. In this case, as the enforcement notice requires the removal of the pergola and the removal of all materials associated with this from the site, I consider the purpose of the notice is to remedy the breach of planning control.
18. I have already concluded that even with the wheel covers that hold the pergola in place removed, the structure would constitute development. I have considered whether there are any other lesser steps that would achieve the purpose of the notice with less cost and disruption to the appellant, but none are obvious to me. Since the purposes of the notice are to remedy the breach of planning control, no lesser steps other than those set out in the notice would achieve those purposes. Therefore, the appeal on ground (f) fails.

The appeal on ground (g)

19. The appeal on ground (g) is made on the basis that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period specified in the notice is 3 months. A period of 6 months has been requested.
20. The time for compliance relates to the time taken to meet the requirements of the notice. The appellant's case is somewhat contradictory, in that it claims on the one hand that the structure can be easily moved around (presumably this means on wheels on the small roof terrace), and on the other hand states that its removal (from the roof terrace) requires either a crane or total dismantling by specialist contractors and equipment.
21. However, it appears to me from my own observations on site that dismantling the structure into manageable sections for removal through the building would be a relatively short and straightforward job for two or more persons with the appropriate basic manual or power tools, and would not require any specialist equipment or expertise. Even if, upon dismantling the structure, it is necessary to

² Ref. APP/X5210/C/20/3260569

arrange for the parts to be lowered off the building by a crane or a hoist, there is no evidence before me to suggest this could not be achieved within 3 months.

22. I therefore consider 3 months to be sufficient time to find suitable persons to undertake these works, and the appeal on ground (g) fails.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall therefore uphold the notice.

R Bartlett

INSPECTOR