



Appeal Decision

Site visit made on 24 January 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2023

Appeal Ref: APP/G5750/C/21/3282835

Land at 252-256 Romford Road, Forest Gate, London E7 9HZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by British Institute of Technology Ltd against an enforcement notice issued by the Council of the London Borough of Newham.
 - The notice, numbered 21/00191/ENFC, was issued on 16 August 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a permanent marquee on the roof of the premises ("the unauthorised development").
 - The requirements of the notice are to:
 1. Demolish the marquee on the roof of the premises (as shown in the approximate location edged in blue on the attached plan).
 2. On completion of step 1 above, remove all materials and debris from the site.
 - The period for compliance with the requirements is: One month.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed.

Ground (d)

2. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. In an appeal under ground (d), issues of planning merit are not relevant. The burden of proof is firmly on the appellant to make their case, on the balance of probabilities.
3. Section 55(1) of the Act sets out the meaning of development. Development comprises two limbs: (1) The carrying out of building, engineering, mining or other operations in, on, over or under land; and (2) The making of any material change in the use of any buildings or other land.
4. The main thrust of the appellant's case is that the marquee has been erected and used for a period of more than 10 years. In their evidence, the appellant refers to 'established use' and the 'Use of the Marquee'. However, the notice alleges operational development, not a material change of use.
5. It was established in *Skerritts of Nottingham Ltd v SSETR & Harrow LBC* (No. 2) [2000] EWCA Civ 5569; [2000] JPL 1025 there are three primary factors in determining what is a building: size, permanence and physical attachment, none of which is necessarily decisive.
6. The marquee is a substantial structure which is physically connected to the building below in a number of locations using bolts, which connect the feet of the marquee to the roof of the main building. Given the size of the marquee, I

consider it is likely to take a number of people a number of days to take it down and re-erect it. The marquee has the quality of permanence and is visible from Nursery Lane and from the rear of properties along Disraeli Road. In my view, therefore, the marquee is a building for the purposes of the Act.

7. Section 171B(1) of the Act states where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. This appeal will therefore turn on whether or not the construction of the marquee was substantially completed on or before 16 August 2017.
8. The appellant states that in 2010, they installed a purpose-built marquee which was attached to the main structure. A series of photographs have been provided by the appellant, which are stated to show events held at the site. However, the photographs provided are undated and so it is not possible to determine when they were taken.
9. The appellant has provided an invoice, dated 17 April 2010, for the purchase of a 12m by 30m marquee and an invoice, dated 10 April 2010 for the fixing of a marquee to a permanent structure. The appellant has also provided a petition signed by a number of individuals, which states signatories are aware that the Institute installed a marquee around 2010. While the evidence provided points towards a marquee being erected on the site in 2010, it does not show that the marquee has remained *in situ* since its erection.
10. The appellant states that the marquee stayed year on year, being taken down for maintenance and repair and being put up again. I have been provided a letter signed by the Managing Director and Construction Engineer of Kulaura Builder, which states that their engineers have been on site from 2010 and each year to 2021, which supports the appellant's assertion in this regard. A fire escape route plan, dated 2010, also indicates a 'Terrace Marquee', which points towards a marquee being located within the site.
11. The Council has provided a series of aerial photographs, dated 14 February 2011, 19 March 2011, 4 August 2011, 25 June 2012, 19 July 2013, 26 July 2014, 4 June 2015, 8 October 2015, 12 August 2016, 4 August 2017, 6 and 7 May 2018, 11 April 2019, 29 June 2019, 6 March 2020 and 30 March 2021. The marquee is not evident on the roof of the building until the 6 May 2018 aerial photograph and at this point, the structure appears in skeleton form.
12. It is not until the 30 March 2021 aerial photograph that the cover to the marquee is evident. This points towards the marquee not being substantially completed until after the 6 March 2020 aerial photograph was taken and is consistent with comments made by a number of interested parties who suggest the marquee was not erected at the site until lockdowns associated with Covid-19 had commenced.
13. It is suggested that the aerial photographs provided by the Council were taken when the marquee had been taken down for repair or to safeguard it from weather conditions. However, even if the marquee had been erected in 2010 and subsequently taken down, the act of erecting the marquee on the site after 6 March 2020 was operational development for the purposes of the Act.

14. Thus, the appellant has not demonstrated, on the balance of probabilities that the marquee was substantially completed on or before 16 August 2017 and the appeal under ground (d) must fail.

Conclusion

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

M Savage

INSPECTOR