



Appeal Decision

Site visit made on 8 January 2024

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 5TH FEBRUARY 2024

Appeal Ref: APP/J1915/X/23/3319967

Maltons, Cambridge Road, Thundridge, Hertfordshire SG12 0ST

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Ali Shafiy against the decision of East Hertfordshire District Council.
- The application ref 3/22/2583/CLXU, dated 12 December 2022, was refused by notice dated 13 March 2023.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is described as 'An existing free standing demountable marquee located in the rear between the existing restaurant / bar & the existing smoking shelter. The marquee is over 2m from the boundary, 2.95m high & less than 50msq in area. The marquee is used for eating & drinking.'

Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matters

1. The application form refers to the development as an 'existing use' but it is apparent from other application documents that the development in question is operational development and I consider the application on that basis.
2. Amended plans were submitted during the course of the application as those originally submitted apparently did not properly reflect the size or position of the appeal marquee. The Council then determined the application based upon those revised drawings.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development ('LDC') was well-founded. This will turn upon whether the development described in my banner heading above would have been lawful as at the date of the LDC application. Planning merits are not relevant to the assessment¹ and the onus is on the appellant to make their case on the balance of probability.

¹ Albeit that I have seen interested party comments setting out concerns in relation to matters of planning merit

Reasons

Legislation/case law

4. There is no suggestion from either of the main parties that the appeal marquee does not represent development requiring planning permission. Rather, the matter in dispute is whether it represents permitted development ('PD') granted planning permission by Article 3 and Schedule 2, Part 2, Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('Class G').
5. Class G grants planning permission for '*The provision of one moveable structure within the curtilage, and for the purposes, of a building used*' for purposes of a drinking establishment/for the sale of food and drink. The parties are agreed that the marquee in question is used for purposes permitted by Class G and that the limitations contained in G.1 would be met. Accordingly, the only matter in dispute is whether the appeal marquee is 'moveable' per the Class G description above.
6. The Council cites case law² dealing with the consideration of whether an item is a building. These cases indicate that in making such an assessment, regard must be had to size, permanence and degree of physical attachment. However, the matter to be determined in these cases was whether the item in question was a building (indicating that operational development requiring planning permission had occurred). As outlined above, the point in contention here is not whether the marquee is a building, but instead whether it is 'moveable'. As such, whilst the cases cited might contain some useful indicators as to whether or not an object is moveable, these were dealing with a different question and so their applicability is limited in this way.

Analysis

7. The marquee is a metal framed object with fabric covering of some 10m in length by 4m in width, with a maximum height of 3m³. It has a significantly smaller footprint than that of the main appeal premises building. The size of an object has a bearing on whether or not it can reasonably be said to be moveable and I acknowledge that the marquee is large enough to mean that it was likely constructed on site. However, since the marquee falls fairly comfortably within the maximum footprint stipulated in G.1⁴, it would be illogical to find that its size indicated it to not be moveable; Class G envisages structures of a similar or even greater size being moveable.
8. The Council points to the degree of physical attachment of the marquee as evidence that it should not be deemed moveable. The marquee has no permanent foundation and is secured to the patio by a relatively small number of metal bolts and is attached to the barge boards of the adjacent part of the

² *Skerritts of Nottingham Ltd v SSETR (No. 2)* [2000] 2 PLR 102; *R (oao Hall Hunter Partnership) v FSS* [2006] EWHC 3482 (Admin); and *Barvis v SSE* [1971] 22 P&CR 710

³ The Council's measurements differ very slightly from those shown on the application plans albeit that both would meet with the G.1 size restrictions. For simplicity, my determination is therefore based upon a marquee of a size that is 3m or less in height, having less than a 50 square metre footprint and no part of which is within 2m of any residential curtilage and as otherwise described in the application documents

⁴ Being the lesser of either 50% of the footprint of the main building or 50 square metres

appeal premises by a fairly small number of screw fixings. Heating and lighting are provided suspended from the marquee roof frame, with the power supply provided from the adjacent outbuilding.

9. The appellant comments in response that structures of the size permitted by Class G would be likely to require some form of bracing for the purposes of stability and has submitted a letter from the manufacturer of the marquee stating that it could be dismantled and removed by non-professionals using basic tools in under two hours.
10. In my view, the physical attachment of the marquee to the patio is no more than is reasonable to provide stability bearing in mind its size and the hard surface on which it sits. The appellant explains that the affixation to the barge board is to weatherproof the connection between the main building and the marquee. Both of these means of physical attachment could be fairly swiftly and easily detached, and I find as a matter of fact and degree that these do not render the marquee to not be moveable. On the contrary, the appellant's evidence is that the marquee can be fairly swiftly removed.
11. The Council also draws my attention to how long the marquee has been in situ, that the appeal site would not readily accommodate this elsewhere, and that it is unlikely to be moved in view of its convenient position in relation to the main building. Reference is made to an earlier application dismissed at appeal⁵ for a covered pergola in broadly the same position as evidence of an intention for the marquee to remain in situ. I share the appellant's view though that Class G does not stipulate that the structure should be moved, but only requires that it be moveable. The absence of an intention to move an object does not necessarily preclude it from being deemed moveable. In any event, the appellant outlines that it is possible that the marquee might be dismantled and reassembled off-site or might be disassembled and removed in summer months to enable more 'al fresco' dining.
12. Drawing these matters together, Class G stipulates only that the structure is moveable and not that it will in fact be moved around within the appeal site. Its size is permissible under Class G and logically cannot therefore be a reason for it to be deemed not to be moveable. I accept that in reality there is a spectrum of moveability in the sense that a structure might theoretically be moveable but in practice would take many professionals a number of days to move. In this case, the means of attachment and construction of the marquee mean that it is less moveable than an structure that could be disassembled and moved in minutes, but it is more moveable than a structure which would take days to be disassembled and moved⁶.
13. I find then as a matter of fact and degree on the evidence before me that, since the marquee could be disassembled with basic tools in less than two hours, it is moveable for the purposes of Class G. It therefore represents PD under Class G and is lawful.

Conclusion

14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the operational development described above was not well-founded

⁵ APP/J1915/W/21/3277099

⁶ As was assumed to be the case as regards the marquee in the *Skerritts* judgment referenced above

and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

15. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operation which is found to be lawful.

V Bond

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 12 December 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operations are granted planning permission by Article 3 and Schedule 2, Part 2, Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015 and so represent permitted development.

Signed

V Bond

Inspector

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First Schedule

An existing free standing demountable marquee located in the rear between the existing restaurant / bar & the existing smoking shelter and being of a size that is 3m or less in height, having less than a 50 square metre footprint and no part of which is within 2m of any residential curtilage and as otherwise described in the application documents. The marquee is used for eating & drinking.

Second Schedule

Land at Maltons, Cambridge Road, Thundridge, Hertfordshire, SG12 0ST

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: **5TH FEBRUARY 2024**

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Scale: Not to Scale

