



Appeal Decision

Site visit made on 22 April 2024

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 2 May 2024

Appeal Ref: APP/P1940/C/22/3301405

Land at Hunton Park Hotel, Essex Lane, Kings Langley, Hertfordshire WD4 8PN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr N Khanna against an enforcement notice issued by Three Rivers District Council.
 - The enforcement notice was issued on 17 May 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a marquee (measuring approximately 20m in width, 40m in length and 6m in height) with attached toilets and catering area, including wood flooring, sub-base and associated fixtures and fittings, the laying of associated paving and loose aggregate, the erection of associated metal bollards and external generator, close boarded timber enclosure and a shipping container ("the Works").
 - The requirements of the notice are:
 1. Remove the marquee (including the catering area and toilets attached to the marquee), its sub-base, wood flooring, and all associated fixtures, fittings and equipment (including but not limited to electricity points, internal lighting, chandeliers, tables and chairs, catering equipment) (approximate location shown on the attached Site Map) from the Land.
 2. Remove the paving, metal bollards, loose aggregate, external generator and associated close boarded timber enclosure and shipping container (approximate locations shown on the attached Site Map) from the Land.
 3. Following compliance with Steps 1 and 2 above, restore the Land to its condition before the breach of planning control took place.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - Deleting the wording in paragraph 3 and substituting with "Without planning permission the erection of metal bollards and external generator, close boarded timber enclosure and a shipping container."
 - Deleting paragraph 5.1.
 - Renumbering paragraph 5.2 as 5.1 and deleting words "paving," and "loose aggregate," from that paragraph.
 - Renumbering paragraph 5.3 as 5.2 and deleting the words "Steps 1 and 2" and substitute with "Step 1" in that paragraph.

2. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld.

The Notice

3. The appellant contends that Site Map 1 does not show accurately the location of the Garden Marquee, nor is the size/scale of the marquee accurately represented. However, he is satisfied that these errors are not fatal to the validity of the notice and could be corrected if deemed necessary.
4. Section 173(10) of the Town and Country Planning Act, 1990, as amended (the Act) states that an enforcement notice shall specify such additional matters as may be prescribed, and these are set out under the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (ENAR). ENAR4 (c) requires the precise boundaries of the land to which the Notice relates to be specified whether by reference to a plan or otherwise.
5. In this case the Enforcement Notice includes two plans. A "Site Map" which shows the precise boundaries of the Land, and it also identifies the approximate location of "the Works" which are alleged as a breach of planning control. The second plan, "Site Map 1" is not to a recognised scale but illustrates the location of the different components of "the Works". The appellant is clearly aware from the contents of the enforcement notice what he has done wrong, and both the wording of the breach and accompanying plans assist in that regard. I am satisfied that the enforcement notice is valid and do not consider it necessary for the plans to be corrected.

Appeal on ground (d)

6. In relation to a breach of planning control consisting of the carrying out without planning permission of building operations, 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 complete.
7. The main issue is whether the erection of the Garden Marquee and building operations, including the erection of metal bollards, external generator, close boarded timber enclosure and a shipping container alleged in the notice were substantially completed on or before 17 May 2018. The burden of proof lies with the appellant on this legal ground and the test is the balance of probabilities.

The appellant's case

8. The appellant maintains that the Garden Marquee was in place and used for a wedding on 28 April 2018 and has remained in that location being utilised for events thereafter. The appellant was not the owner of Hunton Park Hotel when the Garden Marquee was first erected and relies on evidence he has assembled which includes the following:
 - Garden Marquee booking for 28 April 2018, including booking forms;
 - Garden Marquee bookings for 2019-2022;
 - dated photographs;
 - risk assessment of Garden Marquee, dated 27 April 2018;

- details from external caterer and event's organiser;
- video stills/photographs of events on 28 April 2018;
- Google street view images;
- Trip advisor review/comment; and
- email correspondence from site user.

The Council's case

9. In response the Council has provided details of an application for a Lawful Development Certificate for existing development comprising the Garden Marquee¹ which was made by the previous owners of Hunton Park Hotel and refused by the Council on 16 May 2022. However, considering the evidence before them in this case the Council accept that, on the balance of probabilities, the Garden Marquee was in place and utilised for a wedding on 28 April 2018. Nevertheless, having regard to a Google image dated 7 May 2018, and correspondence from the previous owner of Hunton Park Hotel which contends that the Garden Marquee was removed for repair during May 2018 and then rebuilt, the Council do not accept that the existing Garden Marquee was substantially complete on 17 May 2018.

Assessment of evidence

10. It is understood that there are two marquees utilised for events at Hunton Park Hotel. The Terrace Marquee which benefits from a certificate of lawfulness and has been in situ since 2007, and the Garden Marquee which is the subject of this appeal. The Garden Marquee is situated within the garden area to the West of the main house/hotel.
11. Evidence submitted in support of the Appellant's case includes booking forms for two wedding events on 28 April 2018, one of which is referenced the Garden Marquee for Nishal Patel. Evidence includes a Work Base Risk Assessment for the Garden Marquee dated 27 April 2018 and a signed off checklist from the outside caterers, dated 28 April 2018.
12. Photographs showing the marquee and the event dated 25 and 28 April 2018 are also included. The Council accept that some of those photograph's are clearly the Garden Marquee as it can be distinguished from the Terrace Marquee by its absence of windows. The photographs include images of the paved ramped access enclosed by a timber pergola². Details from the official photographer's website relating to the Patel Wedding are also provided. Those details describe the wedding as taking place in the "newly installed garden marquee"³. Google street view images dated April 2028 also provide glimpses of the Garden Marquee⁴.
13. A Trip advisor review is also included which relates to a stay at Hunton Park Hotel in June 2018 and refers to marquees within the grounds. Email correspondence from the bride whose wedding took place within the Terrace

¹ Local Planning Authority Ref: 21/1408/CLED

² Photograph Nos. 1,2 & 6 Evidence Bundle 5.

³ Evidence Bundle 10: Wedding Photography.

⁴ Evidence Bundle 11: Google Street View Images

Marquee on 28 April 2018 confirms that there was also a wedding taking place at the same time within the Garden Marquee⁵.

14. Having regard to the evidence set out above, I concur with the Council that on the balance of probabilities the Garden Marquee was erected/substantially complete and used for an event on 28 April 2018.
15. That said, it is necessary to consider whether the Garden Marquee, as asserted by the Council, was subsequently dismantled and re-erected such that it was not on the Land in a substantially complete form on 17 May 2018.
16. A Google satellite image has been provided by the Council dated 7 May 2018. The image appears to show the base of the Garden Marquee and what is described as the connecting catering marquee. The paved ramped access linking the Garden Marquee to the main hotel building is also evident in the image. The appellant questions the accuracy of the image date, having regard to how imagery is sourced and recognising that imagery from commercial aerial providers taken on different dates are often "stitched" together to provide a composite view of the world, with no cloud cover. Those images are often sourced from batches of imagery and aerial images are usually made up of a mosaic of several images. Consequently, it is quite possible that the image submitted could have been taken in the month before the 7 May 2018 and thus shows the Garden Marquee under initial construction prior to the event on the 28 April 2018.
17. The Council contend that the Garden Marquee was dismantled for repair during May 2018. In support of this assertion, they have provided a copy of an email from the previous owner, Mr Ruparelia of Hunton Park Hotel, dated 9 May 2022 whereby he confirms that works occurred during May 2018 to remove and rebuild the Garden Marquee so that repairs could be done to the structure⁶.
18. I have had regard to the 7 May 2018 Google image. However, even if the image date is correct, that date is before the relevant date of 17 May 2018. Considering the base of the Marquee is in place, the construction of the Marquee could have been rebuilt in the following 10 days. Mr Ruparelia's email is not precise and does not give any indication of what repairs were undertaken or how long those repairs, if they did occur, took place. Moreover, previous evidence provided from Mr Ruparelia in relation to an application for a certificate of lawfulness for the Garden Marquee was found by the Council to be ambiguous⁷. I therefore give his vague recollection of events little weight.
19. There is no dispute between the parties that the Garden Marquee was substantially complete prior to 28 April 2018 when an event was held within it. Furthermore, the evidence provided by the appellant to demonstrate that the Garden Marquee was in situ in June 2018⁸ with subsequent bookings throughout 2018-2022 is precise and unambiguous and not disputed by the Council.⁹ On the other hand, for the reasons set out in the paragraphs above, the evidence submitted by the Council to contradict the appellant's version of events or make it less than probable is not precise or unambiguous.

⁵ Evidence Bundle 13: Email correspondence.

⁶ Appendix J, Local Planning Authority Statement of Case.

⁷ Appendix D, Local Planning Authority Statement of Case.

⁸ Evidence Bundle 12: Trip advisor comment.

⁹ Evidence Bundles 2,3 & 4: Bookings.

20. I have not been provided with any evidence from the appellant, or from any other source, in relation to the date of construction of the metal bollards, external generator, close boarded timber enclosure and shipping container. It is not therefore possible for me to determine that those building works were substantially complete on or before 17 May 2018.

Other Matters

21. I have had regard to the observations and concerns made by local residents regarding issues relating to noise and disturbance associated with events at Hunton Park. However, the appeal in this case relates solely to legal matters and the planning merits of the development are not a consideration before me.

Conclusion

22. In conclusion, on the balance of probabilities, building operations for the erection of the Garden Marquee with attached toilets and catering area, including wood flooring, sub-base and associated fixtures and fittings, the laying of associated paving and loose aggregate were substantially complete before 17 May 2018 and thus more than 4 years prior to the issue of the enforcement notice. Therefore, at the date the enforcement notice was issued, the time for taking enforcement action as set out in section 171B (1) of the 1990 Act as amended had expired. The appeal to the extent that it relates to the construction of the Garden Marquee succeeds.
23. However, in the absence of any evidence that would lead me to a different conclusion, the metal boards, external generator, timber enclosure and shipping container were not substantially complete on or before 17 May 2018 and have not gained immunity from enforcement action through the passage of time. The appeal on ground (d), to the extent that it relates to the metal boards, external generator, timber enclosure and shipping container does not succeed.

Appeal on ground (g)

24. The issue is whether the compliance period of 12 months is reasonable. The appellant contends that Hunton Park is a significant business in the local community with economic benefits to the local economy. To minimise disruption to the local economy the appellant considers that a period of two years would be more reasonable as this would allow the Hotel to consider how it would operate under a new business model, retain and re-train staff, maintain the buildings and landscaped gardens.
25. It can be seen by my decision on ground (d) that I have found that the Garden Marquee is lawful and immune from enforcement action through the passage of time. The notice as corrected only requires the metal bollards, external generator, timber enclosure and shipping container to be removed. I do not consider that removal of those items would require the Hotel to significantly amend their business model, and twelve months is therefore a reasonable time to comply with the notice as corrected.
26. The appeal on ground (g) fails.

Overall Conclusion

27. For the reasons given above, I conclude that the appeal should not succeed. I uphold the notice with corrections.

Elizabeth Pleasant

INSPECTOR