



Appeal Decision

Site visit made on 22 October 2025

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 28th October 2025

Appeal Ref: APP/A1530/C/24/3350072

The Lexden Crown, 235 Lexden Road, Colchester, Essex, CO3 4DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Patrik Minder Limited against an enforcement notice issued by Colchester City Council.
- The notice was issued on 16 July 2024.
- The breach of planning control as alleged in the notice is 'Without the benefit of planning permission, the erection of a marquee and timber canopy in pub garden ("The Activity")'. (For the avoidance of doubt, this is the marquee and timber canopy in the photograph attached to this notice)
- The requirements of the notice are
 - (i) Cease the use of the marquee.
 - (ii) Cease the use of the timber canopy.
 - (iii) Permanently remove the marquee including the frame from the land.
 - (iv) Permanently remove the timber canopy from the land.
 - (v) Leave the land in a clean and tidy condition.
- The period for compliance with the requirements is 14 days for requirements (i) and (ii) and 28 days for requirements (iii) (iv) and (v).
- 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 (the Act) (as amended).

Decision

1. It is directed that the enforcement notice is varied by:
 - (i) Deleting all of the requirements and replacing them with a single requirement which states '(i) Remove the marquee including the frame and the timber canopy from the land.'
 - (ii) Deleting the period for compliance in full and replacing it with 'The period for compliance with the requirement is 4 months'.
2. Subject to the variations, the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. The appeal is proceeding on grounds (c) (f) and (g). In the absence of a ground (a) appeal, there is no application for planning permission and the planning merits are therefore not matters for consideration as part of this appeal. The Council refused to grant retrospective planning permission for the erection of a marquee and timber canopy on 26 May 2023.

The Notice

4. It is the duty of the Inspector to put the notice in order irrespective of the grounds of appeal. The first two requirements refer to cessation of the use of the marquee

and the canopy. However, the Council is not alleging that a material change of use has occurred. The wording of requirements (iii) and (iv) which require the removal of the marquee and timber canopy include 'permanently remove.' However, the word 'permanently' is not needed when the enforcement notice attaches to the land. Requirement (v) refers to leaving the land in a clean and tidy condition. However, this is a subjective requirement which falls outside of the scope of the notice.

5. The allegation refers to the erection of a marquee and a timber canopy. The requirements should flow from the notice. A single requirement to remove the marquee with frame and timber canopy from the land would remedy the breach in the event of the notice being upheld. I will vary the notice so that the only requirement is to remove the marquee with frame and the timber canopy from the land. The other requirements will be deleted in full for the reasons given.

The appeal under ground (c)

6. An appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. The appellant states that the marquee is not a building and does not require planning permission but accepts that the timber canopy is operational development. The ground (c) appeal is therefore limited to the marquee only.
7. The marquee is located in the rear garden of the Lexden Crown Public House. The marquee is made up of a metal frame with a white tarpaulin cover with transparent plastic windows to one side which extend along the front of the timber canopy which is wider than the marquee. There have been some minor changes to the marquee since the notice was served as all of the marquee is no longer enclosed as there is now a canopy element at the front.
8. Section 55 of the Act sets out the meaning of development as 'the carrying out of building, engineering, mining or other operations in on over or under that land' Section 336 of the Act defines 'building' to include 'any structure or erection.' The case of *Skerritts*¹ identified the three primary factors which are relevant when considering what is a 'building' which are size, permanence and physical attachment. No single factor is decisive and each case has to be determined upon its own facts and circumstances.
9. With regard to size, the marquee with its pitched roof dominates the pub garden. It is not comparable in size to a typical temporary marquee in a domestic garden which has seasonal use only. The marquee can accommodate tables and chairs for groups of people attending for events including birthdays, weddings and community events and it is substantial in size.
10. Turning to permanence, the appellant argues that the tarpaulin marquee is a lightweight structure which by its nature is temporary and not permanent. The Council became aware of the marquee and canopy when the retrospective planning application was made on 31 March 2023. When the appeal was lodged, the marquee had been on site for in excess of a year and has now been in place for over 2 and a half years. There is no information before me to indicate that the planning application was for a temporary consent. There is no evidence before me that the marquee has moved since it was erected onto the land or is likely to be

¹ *Skerritts of Nottingham Limited v The Secretary of State & Harrow LBC* (No .2) EWCA Civ 5569: [2000] JPL 1025

moved and it has a degree of permanence. Features such as plastic windows, carpeting, lighting and heating distinguish it from covered outdoor seating in a pub garden. Whilst tarpaulin may be associated with temporary structures, the marquee is robust enough to have provided a long term enclosed weatherproof facility at the public house.

11. Dealing with the degree of attachment, the marquee has a metal frame and is attached to the ground with a series of ropes and straps to both sides as well as to the side fence and to the timber canopy element to the rear. At ground level, the ropes and straps are tied around the tops of metal pegs that are likely to have been hammered into the ground. Whilst the marquee could be moved, it would involve removing all the pegs, ropes, straps, dismantling the metal frame and removing the tarpaulin which extends across the front of the timber canopy. It would require a team of people. The marquee needs to be safely secured in view of its use by the public. It is physically attached to the ground with the ropes, straps and pegs and has a degree of attachment that reflects its public use.
12. The marquee has not moved either on or off site but the fact that it could be moved within the site although space is limited does not mean it is not a building. However, as indicated in Skerritts, no one factor is determinative and each case has to be assessed upon its own facts.
13. The marquee is of a substantial size and it has been a permanent feature in the pub garden since at least March 2023. It has a metal frame and is secured to the ground and it has not moved since it was erected although there have been some minor changes to its appearance. It has a degree of attachment which reflects its purpose for all year round events for the public.
14. Having considered the relevant factors of size, permanence and degree of attachment, I do find that the marquee is a building for the reasons given. The marquee therefore constitutes development within the meaning of Section 55 (1) of the Act. The absence of planning permission for its erection constitutes a breach of planning control. The appeal under ground (c) therefore fails.

The appeal under ground (f)

15. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
16. The appeal under ground (f) is limited to consideration of whether the requirement of the notice exceed what is necessary having regard to the purpose of the notice. The amended single requirement is to remove both the marquee with frame and the timber canopy. The only argument made under this ground is that as the marquee is not a building, the notice cannot require its removal. However, I have addressed the appellant's arguments with regard to the marquee not being a 'building' under ground (c). No other arguments are advanced under this ground as to why the requirement is excessive and it is not excessive when the purpose of the notice is to remedy the breach. The appeal under ground (f) therefore fails.

The appeal under ground (g)

17. This ground of appeal relates to the period for compliance which is 28 days for the amended single requirement. The appellant has asked for a period of 4 months as bookings will have been made in advance and notice has to be given of cancellation of future events. The Council has no objection to varying the period for compliance to 4 months. I agree that 4 months is a reasonable period to make the necessary arrangements with regard to future bookings and to remove the development. The appeal under ground (g) succeeds.

Conclusion

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

E Griffin

INSPECTOR