



Appeal Decision

Site visit made on 1 September 2026

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 October 2026

Appeal Ref: APP/Z1510/X/25/3376441

Cross Keys Public House, The Green, Hatfield Peverel, Chelmsford, Essex CM3 2JQ

- 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 Daniel Vann against the decision of Braintree District Council.
- The application ref 25/00264/ELD, dated 10 February 2025, was refused by notice dated 3 June 2025.
- 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 a marquee.

Decision

1. 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.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a LDC is well-founded.

Reasons

3. An application under section 191(1) of the Act¹ seeks to establish whether (a) any existing use of buildings or other land is lawful; (b) any operations which have been carried out in, on, over or under land are lawful. Section 191(2) sets out that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an LDC, the burden of proof is firmly on the appellant to make their case, to the civil standard, which is the 'balance of probabilities'. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
5. The appeal concerns a marquee measuring approximately 9m by 12m, sited within the car park of the Cross Keys Public House. Section 55(1) of the Act sets out that, subject to the following provisions of this section, in this Act, except where the

¹ Town and Country Planning Act 1990 (as amended)

context otherwise requires, “development”, means 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. The appellant has submitted the application on the basis that the marquee is operational development which was substantially completed more than four years prior to the date of the application.

6. Within its decision letter, the Council states that the evidence submitted with the application is not sufficient to prove, on the balance of probabilities, that the Marquee has been erected and used in conjunction with the public house for a period of four years or more before the date of this application. In its statement of case, the Council further comments that the Council ‘maintains the position that evidence including the timeline of events, together with the photographs, is not sufficient to prove, on the balance of probabilities, that the Marquee has been erected and used in conjunction with the public house for a period of four years or more.’
7. The Council appears to be conflating operational development and material change of use. If the marquee is operational development which has been substantially completed at least four years before the date of the LDC application, the appellant does not need to show how it has been used: the operational development would be lawful by virtue of the passage of time. The delegated report also states that there is ‘no definitive financial or contractual account to definitively prove’. However, the burden of proof is to the civil standard, which is the balance of probabilities. The use of terms such as ‘definitively prove’ suggest a different test may have been used to assess the application. Notwithstanding these concerns, my consideration in this appeal is whether the Council’s decision, not the reasons for the decision, is well-founded.
8. The main characteristics of a building, as a matter of fact and degree, are (a) physical attachment, (b) permanence and (c) of a size to be constructed on site, as opposed to being brought onto the site. No one test is conclusive. The marquee is a substantial structure which is likely to have taken some time to erect on site and is fixed in place using numerous bolts. From the evidence, notwithstanding any argument regarding immunity, it seems that the marquee has been located within the site for a significant period of time and has the quality of permanence. In my judgement, the marquee is a building for the purposes of the Act.
9. The Council refers to a number of objections submitted in response to the application, including an objection that the application fails to comply with the GPDO given the marquee is one of 6 structures, its size and proximity to 1 The Cottages. From the summary of the representation, it seems this relates to Class G, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO), which permits the provision of one moveable structure within the curtilage. I also note that the appellant makes reference to Class G within their application form.
10. While the marquee may not meet the limitations set out within the GPDO, the main thrust of the appellant’s case is that the marquee was substantially completed in June/July 2020 and is therefore immune from enforcement action by virtue of section 171B(1) of the Act.

11. Within its delegated report, the Council states that 'The evidence submitted would have to demonstrate that the building has been in place and substantially completed for a period of four years or more prior to the submission of the application, therefore being from the 8th April 2020. However, given the date of the LDC application, that date is not correct. The application form is dated 10 February 2025, therefore the appellant will need to show, on the balance of probabilities, that the erection of the marquee was substantially completed on or before 10 February 2021.
12. The appellant states that a marquee, similar in size and style to the present marquee, was hired during in December 2019 for a Christmas engagement. This was removed in early January 2020. The appellant states that the large marquee (the subject of this appeal) was installed in June 2020 following the easing of Covid-19 lockdown restrictions in May 2020, to allow small numbers frequenting public houses outside only. An invoice, dated 9 June 2020, has been provided for payment and delivery of the marquee, along with an email, regarding installation of the marquee.
13. Photographs provided by the appellant, dated 5 July 2020, show the marquee *in situ*. A Bing Maps photograph, dated 31 August 2020 also shows the marquee *in situ*, as does an aerial photograph dated 26 March 2022. Within its delegated report, the Council refers to a review of satellite imagery, which notes that on 10 April 2020 there was no marquee erected (a point not disputed by the appellant) and that it was on site on 26 March 2022, 13 June 2023 and 15 June 2024.
14. It seems that the Council's Planning Enforcement Team visited the site on 1 July 2020 and again on 3 July 2023. The Council does not suggest that the marquee was not present during its visits, nor does it suggest it has been moved. There is no evidence to show that the marquee has been taken down and re-erected and, given its substantial size and the time likely to be required to take it down, I consider it likely that the marquee has been retained in its current position since that time.
15. The appellant suggests that, following on-site review and measurement, the enforcement case was closed. The appellant has provided a screenshot of reference 20/00233/UBW3, which concerned building/engineering works, received on 1 July 2020 and closed on 11 October 2022. Further screenshots are provided for references 23/00292/UBW3 and 23/00363/UBW3, concerning building/engineering works, which were closed on 24 July 2023 and 17 August 2023 respectively.
16. The Council does not suggest that an enforcement notice has been issued in respect of the marquee and, it seems from the appellant's evidence that the Council has been aware of the presence of the marquee within the appeal site from July 2020. The evidence, including aerial photographs and Google Street View and Bing images, supports the appellant's case in this regard.
17. In my judgement, the appellant has shown, on the balance of probabilities, that the marquee was substantially completed by July 2020, more than four years prior to the date of the LDC application. Consequently, by the time the LDC application was made, no enforcement action could be taken by virtue of section 171B(1) of the Act and the operations are lawful.

Conclusion

18. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a marquee is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

M Savage

INSPECTOR

Plan

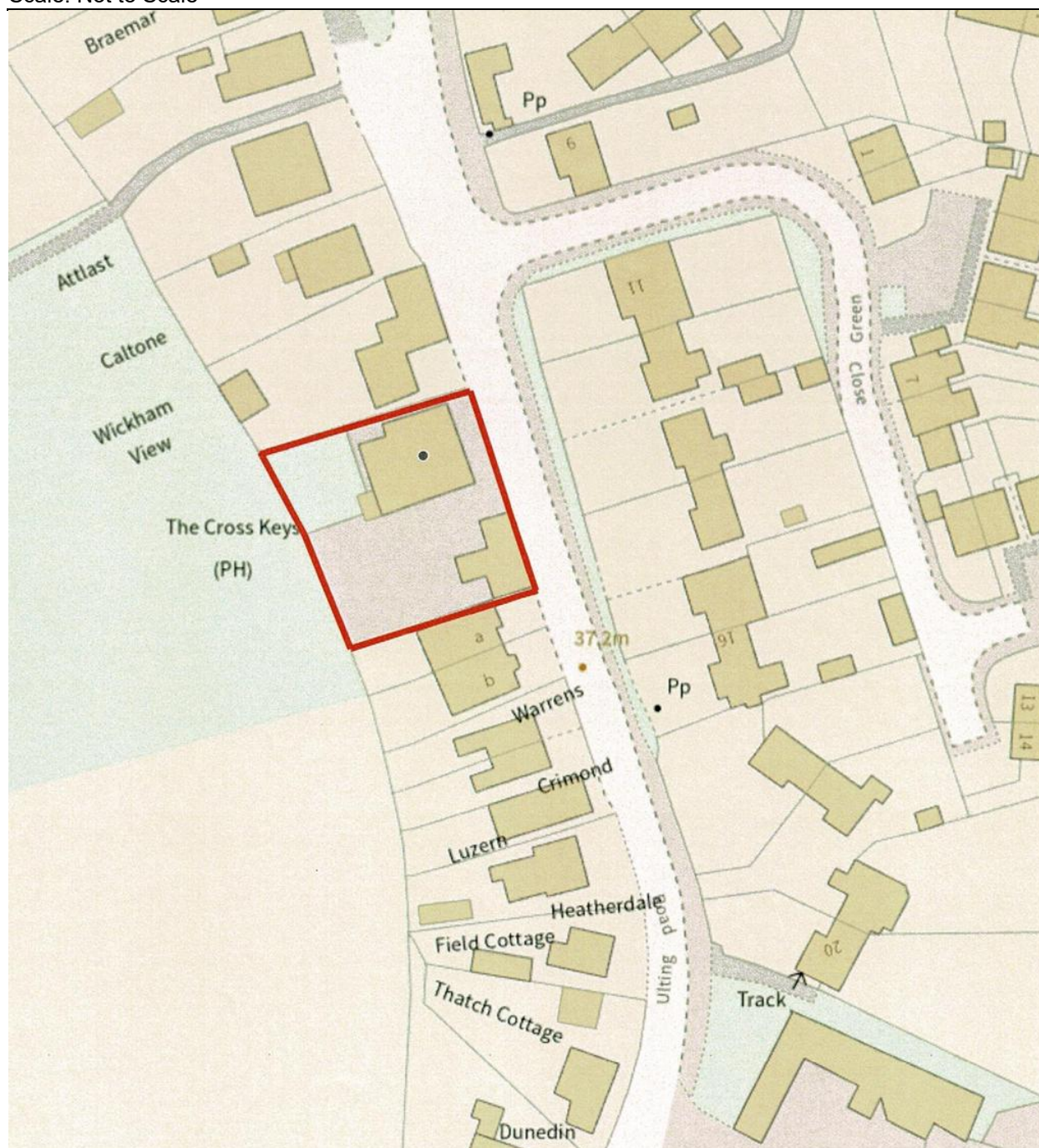
This is the plan referred to in the Lawful Development Certificate dated: 1 October 2026

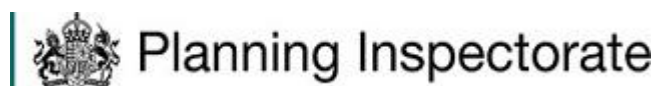
by M Savage

Land at: Cross Keys Public House, The Green, Hatfield Peverel, Chelmsford, Essex CM3 2JQ

Reference: APP/Z1510/X/25/3376441

Scale: Not to Scale





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 10 February 2025 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 appellant has shown, on the balance of probabilities, that the marquee was substantially completed more than four years before the date of the application and so at the date of the LDC application, it was too late for the Council to take enforcement action by virtue of section 171B(1) of the Town and Country Planning Act 1990 (as amended).

Signed

M Savage

Inspector

Date: 1 October 2026

Reference: APP/Z1510/X/25/3376441

First Schedule

The erection of a marquee.

Second Schedule

Land at Cross Keys Public House, The Green, Hatfield Peverel, Chelmsford, Essex
CM3 2JQ

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 use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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.