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Planning Development

Evidence Statement – Certificate of Existing Lawful Development

Erection of a Marquee Building at The Woodman Inn, Thunder Bridge Lane, Kirkburton, Thunder Bridge, Huddersfield, HD8 0PX

Introduction and background

An application for a Certificate of Existing Lawful Development is submitted to the Council under Section 191 of the Town and Country Planning Act 1990 (as amended). The date of the application is 5th November 2024 and the applicant is Frederic Robinson Limited.

The application relates to the erection of a marquee structure in relation to The Woodman Inn, Thunder Bridge Lane, Kirkburton shown hatched red on the attached location plan at Appendix A. The land edged red on the Location Plan represents the extent of the building within the ownership of the applicant.

The marquee was erected for the purposes of holding various functions and events, mainly weddings by the previous pub owners. Robinsons purchased the pub and surrounding land / cottages in June 2022 and inherited the marquee as part of the sale.

It is understood that when purchasing the property, Robinsons had not initially appreciated the marquee may have needed planning permission. However, one of the key attractions of the property for Robinson at this time was the fact the premises was capable of accommodating weddings of a reasonable capacity and frequency, with the presence of the marquee being a key part of this.

It then became apparent this summer that the marquee had been continuously in place for over four years (from June 2020 onwards), and advice was sought on how Robinsons could regularise the situation in planning terms. Counsel's advice was also obtained with regard to the permanence of the structure with a view to demonstrating the structure is a 'building' for planning purposes.

What the application seeks to establish as lawful development

The application is therefore made under the four-year immunity rule as the development in question relates to the following aspect of 'development' as defined under Section 55 of the Town and Country Planning Act: ¹

¹ Meaning of 'development' and 'new development'

- a) Building operations comprising the substantial completion of a marquee over four years prior to the date of this application.

With regard to the recent changes to the immunity periods, the Planning Act 2008 (Commencement No. 8) and Levelling-Up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 were made, bringing Section 115 of the Levelling-Up and Regeneration Act 2023 into force on 25th April 2024.

This changed the period for all breaches of planning control to 10 years in England. However, Regulation 5 of the 2024 Regulations includes transitional provisions which provide that, where operations under Section 171B(1) Town and Country Planning Act were substantially completed before the 25th April 2024, the 4 year period will continue to apply. The transitional arrangements are also reflected in the relevant Planning Practice Guidance (Paragraph 004 Reference ID: 17b-004-20180222).



The marquee building forming the subject of this application (northern end view)

Lawful Development Certificate legislation

The legislation sets out (Section 191 – 1):

“If any person wishes to ascertain 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**²; or

² Our emphasis

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.”

Section 191 (2) goes on to state:

“For the purposes of this Act 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.

Section 171B (1) (as amended this year) confirms the time limits for enforcement action in respect of building operations:

“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 – (a) in the case of planning control in England, ten years beginning with the date on which the operations were substantially completed.”

However, as discussed in the previous section, where operations under Section 171B(1) Town and Country Planning Act were substantially completed before the 25th April 2024, the 4 year period will continue to apply.

Statutory requirements of the Town and Country Planning (Development Management Procedure) Order 2010

As required by this secondary legislation, Part 8 (39) states that such an application must be accompanied by the following information (responses shown in [blue](#)):

- (a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North; ([submitted with this application - see accompanying location plan at Appendix A](#))
- (b) such evidence verifying the information included in the application as the applicant can provide; ([this Evidence Statement and Sworn Statements at Appendices B, C and D](#)); and
- (c) a statement setting out the applicant’s interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application. [The applicant Frederic Robinson Limited is the freehold owner of the property in question.](#)

Guidance and case law for Lawful Development Certificate applications

The National Planning Practice Guidance ‘Lawful Development Certificates’, paragraph 006, states:

“In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.”

Case law notes that the ‘balance of probability’ test is less onerous than that of ‘beyond reasonable doubt’. Moreover, the courts ³ have held that the applicant’s own evidence does not need to be corroborated by independent evidence in order to be accepted.

Evidence of lawfulness

1) Confirmation that the marquee is a ‘building operation’ under the Section 55 (1) of Planning Act

For the purposes of demonstrating the structure is a building for planning purposes, the following information is relevant:

- The structure is made up of a metal frame with timber panelling attached on both ends. It has a timber floor suspended on top of a gravel base.
- It is attached to the ground by various quite heavyweight steel pegs (see image below).
- Internally, beneath the floor timber posts are buried in the ground 12 inches deep. These posts are spaced every 3 metres.

In terms of construction /deconstruction, it normally takes a team of 6 men at least a couple of days to put up, and one day to take down.

The structure has overall dimensions of 21.4m x 9.2m x 4.0m High) with a 19° roof pitch.

Counsel’s advice was obtained in July 2024 with regard to whether or not the structure comprises a building for the purposes of Section 55.

Counsel’s advice detailed the relevant case law and established tests – size, permanence, and physical attachment – and advised as follows:

“Considering the factors outlined in *Cardiff Rating Authority*:

- a. The Marquee is of a significant size, it was constructed on Site as opposed to being brought already made to the Site.
- b. The Marquee has been permanently in place for 4 years. It is therefore for all intents and purposes a permanent structure.
- c. The Marquee is physically attached to the Site, including by deep buried timber posts. Its physical attachment is confirmed and supported by the evidence of how long it takes to construct and deconstruct by a team.

Accordingly, although the assessment of whether the Marquee is a ‘building’ and falls within the scope of section 55 is a matter of planning judgement, in my view applying the correct

³ *Gabbittas v Secretary of State for the Environment and Newham LBC [1985] J.P.L. 630*

legal approach it is difficult to see how a conclusion other than one that it is a building could rationally be reached.”



Steel peg example on the outside of the marquee

2) Sworn Statements of declaration from two witnesses

The first sworn statement is provided by David Woodhead, Cellar Maintenance operative, and is enclosed with this application at Appendix B. In summary, the witness has worked at the Woodman Inn since 2014. He states that the marquee was first erected in August 2018 but was taken down and re-erected several times until June 2020, when it was erected on a permanent basis. The marquee is used for various functions and events, namely weddings.

The second sworn statement is provided by Jordan Lee, General Manager, and is enclosed with the application at Appendix C. In summary, the witness has worked at the Woodman Inn since 2016 and in his current role since 2021. Again, he confirms that the marquee was first erected in August 2018 but was taken down and re-erected several times until June 2020, when it was erected on a permanent basis.

Mr Lee goes on to confirm his detailed knowledge of the structure of the marquee – comprising a steel framed structure with glazed windows to the side elevations, and timber panelling on both ends. Mr Lee confirms that the structure has a timber floor suspended on top of a gravel base and is attached to ground by steel pins. Beneath the floor, timber posts are buried in the ground and are spaced every 3 metres.



Southern end of the marquee

3) Google Earth aerial photos

Although not conclusive in themselves because of the inevitable time gaps, the Google Earth images (Appendix D) provide further evidence to corroborate the witness statements demonstrating that the marquee has been in existence for the requisite period.

4) Immunity from enforcement action

We are not aware of any enforcement action during the four years preceding the date of this application.

Conclusion

It is submitted that the development described above is lawful at the date of this application under Section 191 of the Town & Country Planning Act.

The evidence listed above is considered to be sufficiently precise and unambiguous to prove, on the balance of probabilities, that operations to form the marquee (a) comprise building operations under Section 55; and that (b) such operations were completed more than four years ago. This comprises the minimum required four-year immunity time period before the date of this S191 Certificate of Lawfulness application.

Finally, as the Planning Practice Guidance recommends ⁴, should the Local Authority obtain its own evidence, this needs to be shared with the applicant to enable comment and the opportunity, if necessary, to produce counter-evidence.

⁴ Paragraph 006

In the light of the above, we respectfully submit that the aforementioned development is indeed lawful, and request that the Council grant the Certificate of Lawfulness accordingly.

Please do not hesitate to contact us if you require any further information, or clarification on any of the above.

Robert Halstead Chartered Surveyors & Town Planners

5th November 2024