

5n E/11/0306/A - Unauthorised erection of a marquee in the rear garden of The Catherine Wheel Public House, Gravesend, Albury, SG11 2LW

Parish: ALBURY

Ward: LITTLE HADHAM

RECOMMENDATION:

That the Director of Neighbourhood Services, in consultation with the Director of Internal Services, be authorised to take enforcement action under Section 172 of the Town and Country Planning Act 1990 and any such further steps as may be required to secure the removal of the unauthorised marquee.

Period for compliance: 3 months.

Reason why it is expedient to issue an enforcement notice:

1. The application site lies within the Rural Area as defined in the East Herts Local Plan Second Review April 2007 where development will only be allowed for certain specific purposes. There is insufficient justification for the marquee and its use results in a degree of noise and disturbance which causes harm to the rural character of the site and its surroundings. The development is therefore contrary to policies GBC3 and ENV1 of the East Herts Local Plan Second Review April 2007 and the National Planning Policy Framework.

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1.0 Background:

- 1.1 The site is shown on the attached OS extract. It is located at the southern edge of the settlement of Gravesend on the corner of the lane leading to Patmore Heath.
- 1.2 In September 2011 a concern was raised to the council regarding the erection of a substantial marquee in the garden of the above public house. It has been there since May 2011.
- 1.3 Members may recall previous reports with regard to the erection of substantial marquees in the district and that they are considered to represent operational development of the land.
- 1.4 This position follows the decision of the Court of Appeal in the case of *Skerritts of Nottingham v SSETR and Harrow LBC* ([2000] JPL 1025). The background to that case bears similarities to this matter; it

E/11/0306/A

concerned the erection of a seven bay (five enclosed and two roofed only) marquee with a solid floor and an electrical supply in the grounds of a Grade II listed country house hotel for eight months of the year. The unanimous judgement of the Court was that the erection of such a marquee was a building operation and that the resultant structure was a building.

- 1.5 This marquee has 5 bays, measures 6 metres by 3 metres, has a wooden floor and an electrical supply. It is of vinyl/canvas construction over a metal frame with windows on the flank elevation. The owners state that it is their intention to erect the marquee from 1st April to 30th September and 1st December to 4th January annually, a period of just over 7 months.
- 1.6 Members may recall that the Council have recently relied upon the *Skerritts* judgement in serving an enforcement notice on another site which required the removal of a marquee. That (operational development) notice was subsequently upheld by an Inspector on appeal. Accordingly it is considered that the erection of the marquee is a building operation and not a use of the land.
- 1.7 The enforcement officer wrote to the owners and subsequently spoke to their planning agent on 5th October 2011. He stated that the marquee would be removed by the end of October 2011. The enforcement officer wrote to him to state that he would visit the site to ensure compliance and advised him to obtain planning permission before re-erecting the marquee, if it was required by the owners in future years. The marquee was subsequently taken down.
- 1.8 In April 2012 the Council received a renewed complaint that the marquee had been re-erected. The enforcement officer visited the site and met the agent and owner who stated that it was their intention to apply for retrospective planning permission for the marquee.
- 1.9 An application, under application number 3/12/0999/FP, was validated on 6th July 2012 seeking to regularise this development. There were eight third party objections to this application citing perceived harmful noise and general disturbance to the area; harm to the rural character of the area and inappropriate development in the Rural Area. The matter was refused by officers under delegated powers on 29th August 2012.
- 1.10 Photographs of the site will be available at the meeting.

E/11/0306/A

2.0 Planning History:

2.1 The most relevant planning history for the site can be summarised as follows:

3/03/0424/FP	Rebuilding outbuilding following fire damage to incorporate 3no. Letting bedrooms & associated stores.	Approved.
3/06/1753/FP	New build Public House on site of former burnt down Public House.	Approved.
3/06/1754/AD	Fascia Signs / Projecting Sign.	Approved.
3/07/1137/FP	Increase formalised car park area and overspill area.	Approved.
3/11/1401/FP	Retrospective consent for change of use of land to pub garden and provision of outdoor play equipment, and external alterations to pub building, including outdoor storage building.	Refused
3/12/0076/FP	Part retrospective consent for the provision of outdoor play equipment within the existing pub garden and external alterations to pub building including an outdoor storage building.	Refused
3/12/0999/FP	Retrospective permission for the erection of a marquee in the rear garden of The Catherine Wheel pub/restaurant from 1st April - 30th September and 1st December to 4th January annually.	Refused

3.0 Policy:

3.1 The relevant saved policies of the adopted Local Plan in this matter are:-

GBC3	Appropriate Development in the Rural Area Beyond the Green Belt.
ENV1	Design and Environmental Quality.

3.2 The National Planning Policy Framework is also of relevance to the consideration of this development.

4.0 Considerations:

4.1 The main considerations in this matter relate to the impact of the marquee on the character of the site and area in which it lies and the degree of noise and disturbance to neighbouring properties.

4.2 The site is located within the Rural Area beyond the Green Belt wherein there is a presumption against inappropriate development. Having regard to the scale of the development and the nature of the use to which the development serves (public house) Officers do not consider that the proposal accords with policy GBC3 and is therefore inappropriate in the Rural area.

4.3 The site does form part of a pub garden wherein some form of activity and structures and paraphernalia may be expected. However, the marquee structure is 6 metres wide by 12 metres in length and therefore occupies a significant footprint of 72 square metres. Its materials of construction and appearance do not assimilate well with the articulated design of the existing public house building, or the open attractive pub garden and the verdant boundary treatment. The marquee stands in stark contrast to its setting.

4.4 However, the visual impact of the marquee structure from outside the site is considered to be fairly limited. The height of the building at three metres is such that views of it are limited from public vantage points along the road to the north of the site linking to Patmore Heath. Furthermore, the existing boundary treatment to the southern boundary of the application site, obscures views of the building from the main road and to the south.

4.5 Concerns have, however, been raised regarding the impact on neighbour amenity in terms of noise and general disturbance associated with and emanating from the marquee. It provides a dedicated covered area for various functions associated with the public house use and, due to its design, has the potential to create significant and uncontrollable levels of noise and disturbance to nearby neighbouring properties. It is not considered that planning conditions could overcome these issues.

4.6 Whilst acknowledging that the marquee is apparently only required for certain periods of the year – April to September and December, the impact and harm associated with the development during those period

E/11/0306/A

would be significant and this temporary provision would not, in Officers' view, outweigh the inappropriateness of the development and the harm to neighbour amenity and the rural character of the site and its surroundings.

5.0 Recommendation:

- 5.1 In accordance with the above considerations, Officers are of the opinion that the proposed marquee does not represent an appropriate form of development with the Rural Area and results in an unacceptable degree of harm in terms of noise and disturbance to the site and its surroundings, contrary to policies GBC3 and ENV1 of the Local Plan. It is therefore recommended that authorisation be given to issue and serve a Planning Enforcement Notice requiring the removal of the unauthorised marquee.