

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**PLANNING COURT**

Neutral Citation Number: [2025] EWHC 1372 (Admin)

Royal Courts of Justice  
Strand, London  
WC2A 2LL

Friday 16 May 2025

BEFORE:

**MR JUSTICE MOULD**

BETWEEN:

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**THE KING**  
**(On the application of SHAMAN)**

Applicant

- and -

**LONDON BOROUGH OF LAMBETH**

Respondent

- and -

**SUMMER EVENTS LIMITED**

Interested Party

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**MR R HARWOOD KC** (instructed by Goodenough Ring Sols) appeared on behalf of the Applicant

**MR M REED KC and MS R SAGE** (instructed by Lambeth Legal Services) appeared on behalf of the Respondent

**DR A BOWES** (instructed by Richard Max and Co LLP) appeared on behalf of the Interested Party

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**JUDGMENT**  
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MR JUSTICE MOULD:

1. The claimant seeks to challenge the decision of the London Borough of Lambeth, the defendant, on 27 March 2025 to grant the interested party, Summer Events Limited, a Certificate of Lawfulness of Proposed Use or Development, often referred to by the acronym "CLOPUD", for the use of Brockwell Park for a series of festival events collectively known as Brockwell Live 2025 ("the Decision").
2. The Certificate was issued by the defendant by a decision notice dated 27 March 2025. It was reissued on 3 April 2025 in order to substitute the plan of the land to which the Certificate relates so as to show that land in precise delineation. No point is taken on that.

### **The Certificate**

3. The Certificate is in the following terms:

"The London Borough of Lambeth hereby certifies that on 2 January 2025 (the date of this application) the use/operations as described in the First Schedule to this Certificate in respect of the land specified in the Second Schedule to this Certificate and edged with a thick red line on the plan attached to this Certificate, **would have been** lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason(s):

"The temporary use, in 2025, of parts of Brockwell Park together with the provision and set up of associated temporary structures and infrastructure, in order to accommodate the events would, having regard to the nature and duration of those events and to the nature and duration of organised events already held in the park in the same Calendar Year fall within the scope of the permitted development rights contained in Schedule 2, Part 4, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015. As such, the proposed development is considered lawful."

4. The First Schedule to the Certificate described the following use:

"Application for Certificate of Lawfulness (Proposed) with respect to Brockwell Live 2025 (the 'Events') from Friday 23 May 2025 to Sunday 1 June 2025. The build period for the Events will commence on May 11, 2025 until the first event on 23 May 2025. With the above use/operations in accordance with the details in the following plans and documents: BL licensed area, BL25V1.0; red line with vehicle access plus emergency access; Whole site overview South Gate. Cover letter dated 29/12/2024; build and break 2025; BWL and LCS '25 stage usage."

5. The Second Schedule referred to Brockwell Park, Norwood Road, London SE24 0PA. The plan delineated a substantial area of Brockwell Park, together with access from Dulwich Road to the north (the Lido access) and Brockwell Park Gardens and Norwood Road to the south.
6. Build and Break 2025 is a reference to a document which was submitted with the interested party's application for the Certificate. The document is a daily table of activities beginning on Sunday, 11 May, the quoted activities for that day being *"trackway delivery and main pad install. Temporary exclusion zone fence build. Steel shield delivery. Site management onsite for mark-out"*, and concluding with Monday, 9 June to Monday, 16 June, *"full site load out"*, a programme of 37 days in duration. Within the calendar shown in the table are *"Friday, 23 May to Sunday, 1 June, Brockwell Live event"*, *Saturday, 7 and Sunday 8 June, "Lambeth Country Show"*.
7. *"BWL and LCS '25 stage usage"* is a reference to a further document submitted with the interested party's application. That document is a table showing the daily usage of seven stages, some covered and some open air, between 23 May and 1 June and on 7 and 8 June. The table shows that stages 1, 4 and 6 are to be used on all those days, stages 2 and 6 are to be used on each day between 23 May and 1 June, and stage 3 is to be used on 23 to 26 May and on 31 May and 1 June. The particular events for which each stage is to be used on those dates are specified in the table.

## **The Claim**

8. The claimant is a resident of Tulse Hill and lives in a road adjacent to Brockwell Park. She has lived in the area on and off for 23 years. She says that she can see the park

from her flat. She typically uses the park every day for walking, meditating, swimming in the lido and meeting friends. Her flat has no garden so she depends on the park for her mental health and wellbeing. She says that she brings these proceedings on her own behalf but that she is also a member of “Protect Brockwell Park”, an unincorporated association of local residents who have been concerned for several years about the increasing scale and intensity of events in the park and the impact this has had, both on the extent of the park which is fenced off and thus available for enjoyment by residents of Lambeth, and physically on the park's green and heritage infrastructure. She points out that the defendant holds the park on trust for the local community under the Public Health Act 1875 and the Open Spaces Act 1906.

9. The claim was issued on 17 April 2025. On 24 April 2025 I ordered an abbreviated timescale for the filing and service of the defendant's and interested party's acknowledgements of service and of any reply. On 15 May 2025 I ordered that the claimant's application for permission to apply for judicial review should be listed as a rolled up hearing with the court proceeding immediately to determine the substantive claim, if permission were granted. I directed that the claim be listed for hearing on an expedited basis on 15 May 2025.
10. At the hearing the claimant was represented by Mr Richard Harwood KC, the defendant was represented by Mr Matthew Reed KC and Ms Rebecca Sage, the interested party was represented by Dr Ashley Bowes. I am very grateful to counsel and to those instructing and supporting them for their considerable assistance.

### **Grounds of claim**

11. The claim proceeds on two grounds –

(1) The defendant erred in law in concluding that the development enjoyed the benefit of permitted development rights in circumstances where it was clear that the temporary use extended beyond the 28 days permitted by Schedule 2, Part 4, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO").

(2) The defendant failed to have regard to a material consideration, or reached an irrational conclusion, in granting a Certificate of Lawfulness of Proposed Use or Development despite the interested party's own information demonstrating that it required a de-rig process which would extend the use beyond what remained of the 28 days provided for by Schedule 2, Part 4, Class B of the GPDO.

12. I emphasise at the outset that my decision is limited only to consideration of the lawfulness of the decision to issue the Certificate in the light of those grounds of challenge. The sole remedy sought by the claimant in the event that I find one or other or both of the grounds of challenge made out is a quashing order. The practical effect of such an order would be that the defendant would make a fresh determination of the interested party's application for a certificate under section 192 of the Town and Country Planning Act 1990, ("the TCPA").
13. Wider questions, such as whether the use of Brockwell Park for live entertainment events ought to be subject to more detailed and intensive regulation under the TCPA or whether the defendant is fulfilling its duties as trustee under section 10 of the Open Spaces Act 1906 are not before me for determination in this claim. At one stage it appeared that, if successful in her claim, the claimant might invite me to consider the grant of an injunction restraining the holding of Brockwell Live 2025. Mr Harwood wisely eschewed any intention of pursuing such an application. My concern is only with the lawfulness of the decision to grant the Certificate. Other matters of planning control or the proper management of public open space are for the defendant to consider and to resolve in accordance with their statutory powers and duties under the relevant legislation.

### **The legislative background**

14. The normal use of Brockwell Park for over 100 years has been as a public park and as public open space for the enjoyment of the local community. For planning purposes, the lawful existing use of the park is as public open space.
15. The park is one of a number of public parks and gardens which are owned and managed by the defendant. The defendant has published an events policy for the years

2020 to 2025. That policy includes a table of Lambeth Parks and Open Spaces which are considered to be suitable for events. Brockwell Park is shown in that table with an event space of some 51,900 square metres and a maximum capacity of 50,000 persons.

16. Use of Brockwell Park for events of that scale constitutes development for planning purposes. In the language of section 55(1) of the TCPA, to use Brockwell Park for the holding of such an event is to make a material change in the use of the park from use as public open space to use as an event space. Planning permission is required for such a change of use: see section 57(1) of the TCPA.

17. Planning permission may be granted on an application for planning permission or by development order: see section 58(1) of the TCPA. Article 3(1) and Part 4, Class B of Schedule 2 to the GPDO, grants planning permission for

"the use of any land for any purpose for not more than 28 days in total in any calendar year ... and the provision on the land of any moveable structure for the purposes of the permitted use".

18. Planning permissions granted by a development order are known as "permitted development rights". In *Ramsey v Secretary of State for the Environment* [2002] EWCA Civ 118; [2002] JPL 1123 at [46] Keene LJ gave the following guidance on the question whether development falls within the scope of the permitted development right conferred by Part 4, Class B of Schedule 2 to the GPDO:

"It is the duration of the proposed use and the reversion in between times to the normal use of the land which are the critical factors. If [the site] is used for the proposed use on no more than 28 days a year and it reverts after each occasion to [its normal] use for the rest of the year, then the deemed permission in Part 4 Class B covers the proposed use."

19. In a short concurring judgment, Robert Walker LJ said at [49]:

"Our decision will bring home to those concerned with planning matters the importance (as Lord Justice Keene said, the crucial importance) of land reverting to its normal use ... after each occasion of temporary use."

20. Section 192(1) of the TCPA enables a person who wishes to ascertain whether any proposed use of land would be lawful to make an application to the local planning authority specifying the land and describing the use in question. Section 192(2) states:

"If, on an application under this section, the local planning authority are provided with information satisfying them that the use ... described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

21. Section 192(3) of the TCPA requires such a certificate to specify the land to which it relates, describe the use in question, give reasons for determining the use to be lawful and specify the date of the application for a certificate.

22. Section 192(4) states the effect of a certificate granted on an application under section 192 of the TCPA:

"The lawfulness of any use ... for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted ... in any of the matters relevant to determining such lawfulness."

23. Section 193 of the TCPA supplements these provisions. Section 193(4) states:

"A certificate under either of those sections may be issued—

(a) for the whole or part of the land specified in the application; and

(b) where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them;

and shall be in such form as may be prescribed by a development order."

24. It is common ground that in the present case the application was made in the prescribed form.

25. For the purposes of determining whether a proposed use would be lawful on an application made under section 192 TCPA, a local planning authority must apply the definition in section 191(2) of the Act:

"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."

26. In this case, the interested party's application for a certificate under section 192 of the TCPA was founded on the proposition that no enforcement action could be taken against the use of the park for the proposed events described in the application because the required planning permission for the making of a material change in the use of the land from public open space to event space was granted by the Part 4 Class B permitted development right.
27. I should note that the defendant has previously issued certificates under section 192 of the TCPA certifying as lawful the proposed use of Brockwell Park for Brockwell Live 2023 and Brockwell Live 2024 on the basis of the same permitted development right.

### **The application**

28. The interested party's application for the certificate in relation to events proposed for 2025 was dated 31 December 2024. It was received by the defendant on 2 January 2025. Under the heading "Description of proposal", the application form states:

"Brockwell Live Summer 2025 festival series ties together six independent festivals, Wide Awake, Field Day, Mighty Hoopla, City Splash, Cross the Tracks and Brockwell Bounce, offering the most diverse range of London's festivals, all taking place in Brockwell Park over two weekends, from Friday 23 May to Sunday 1 June 2025. Brockwell Live also offers a free midweek family festival, Brockwell Bounce. This application

for a Lawful Development Certificate is for Brockwell Live 2025 (the 'Events') that will take place in the areas indicated on the plan (BL25 Licensed Areas) supplied with this application. We are seeking confirmation, via an application for a Certificate of Lawfulness of Proposed Development whether a temporary change of use of parts of Brockwell Park for various days in the calendar year 2025 in order to accommodate the holding of the [events] together with the installation and deinstallation of associated temporary structures and infrastructure, would be lawful. This application is for a Lawful Development Certificate for the use of permitted development rights to cover the events that are known to be taking place in Brockwell Park in 2025. The build period for the events is set out in Appendix 1 and will commence on May 11 until the first event on 23 May. On the first day, various areas of activities are marked out, tracks are laid out and fences start to be installed. Fence and trackway installation continues over the following four days together with the installation of temporary structures and power. From 14 May installation of structures including the main stage commences. The building of the stages are completed by Thursday 22 May, which is also when traders start to set up their stalls.

A certificate was obtained in 2024 (23/03809/LDCP) and officers took the view that the event is said to have started for the purposes of counting PD days when all the preparatory work that is necessary to take place has been carried out. Following the same approach as last year, a total of 17 days will need to be included in the Lawful Development Certificate.

The stage sizes and events are summarised at Appendix 2 which also shows the stages in use at each event shaded in green. Once the events have been completed, stages 1, 4 and 6 will be left in place for use by the Lambeth Country Show. This event is not included within this application and therefore the construction for the Country Show itself will be dealt with separately by Lambeth events."

29. Under the heading "Grounds of application" the existing use is stated to be "Park" and the proposed use is stated to be "Temporary event space". The following details are given of the proposed temporary use:

"We are seeking to use permitted development rights for a temporary change of use of parts of Brockwell Park for

17 days in the calendar year 2025 in order to accommodate the holding of the Brockwell Live events. This will involve the installation and deinstallation of associated temporary structures and infrastructure. This application is for a Lawful Development Certificate for the use of permitted development rights to cover the events that are known to be taking place in Brockwell Park in 2025.

The build period for the events is set out in appendix 1 and will commence on May 11 until the first event on 23 May. On the first day, various areas of activities are marked out, tracks are laid out and fences start to be installed. Fence and trackway installation continues over the following four days together with the installation of temporary structures and power. The building of the stages are completed by Thursday, 22 May which is also when the traders start to set up their stalls.

A certificate was obtained in 2024 (23/03809/LDCP) and officers took the view that the event is said to have started for the purposes of counting PD days when all the preparatory work that is necessary to take place has been carried out. Following the same approach as last year, a total of 17 days to be included in the Lawful Development Certificate."

30. Under the heading "Why do you consider that a Lawful Development Certificate should be granted for this proposal?", the following response is given:

"The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('GPDO') specifies various classes of development which may be undertaken without the obtaining of permission by way of application to the local planning authority. Such development, referred to as 'permitted development', benefits from the grant of planning permission contained in the GPDO itself. If the proposed development falls within the scope of permitted development rights, then it will be lawful for that reason. The class of permitted development rights that is relevant to the application is contained in Class B of Part 4 of Schedule 2 to the GPDO. Part 4 is concerned with temporary buildings and uses. This allows the temporary use of land for any purpose for not more than 28 days in total in any calendar year. A certificate was granted last year for the same events, also for 17 days."

31. As I have already noted, submitted with the application were the Build and Break 2025 table and the BWL and LCS 25 stage usage table.

32. On 27 February 2025, the planning officer emailed the interested party's consultants as follows:

"I have spoken to my manager and we would like to kindly ask for a three week extension of time for this application until 20 March. This is so there is time for the FUL to be submitted and for the LDC to be reviewed by our legal team given the public interest in the applications. We would also like to request a written statement from you or Lambeth Events which outlines the following:

- confirming that the Spring funfairs have been cancelled
- that the LDC will cover from Monday 12 May, which I believe is when the fences are due to start to be put up and we would now consider when the change of use would commence until Sunday 1 June, the last day of the commercial live events. This would be a total of 21 days. It is advised that the planning application covers the 2 June onwards given that it is believed the Pines and Needles were still on site at the start of January and may therefore have used some PD days."

33. I was told that there was a response confirming those points as matters of clarification. Nevertheless, it was common ground that the application was to certify the lawfulness of the use described in the application form to which I have referred.
34. The application was considered and determined by the planning officer under the defendant's scheme of delegation. I shall read the relevant parts of the officer's report.
35. Firstly, under the heading "Proposed development", the following:

"2.1 The applicant is seeking confirmation, via an application for a certificate of lawfulness for confirmation that a temporary change of part of Brockwell Park for various days in the calendar year 2025 in order to accommodate five events (Wide Awake, Mighty Hoopla, City Splash, Cross the Tracks and Brockwell Bounce) together with the installation of associated temporary structures and infrastructure, including fencing, would be lawful and can be delivered under permitted development rights and do not require planning permission.

2.2 The dates this application is seeking to use the permitted development days is from Sunday 11 May to 1 June

2025 (22 days). Officers acknowledge that other events are taking place after this date and that infrastructure will remain on site but this application is only seeking confirmation of lawful use of the site for the days between 11 May to 1 June 2025.

2.3 A separate Full Planning Application has been submitted under 25/00693/RG3 for the temporary use of Brockwell Park for Lambeth Country Show event taking place in 2025 for a total of 17 event days. The dates in which full planning permission is being sought is from 2 June until 18 June 2025.

2.4 The proposed live events are Wide Awake, Mighty Hoopla, City Splash, Cross the Tracks and Brockwell Bounce. The live events are all taking place in Brockwell Park over two weekends from 23 May to 1 June 2025. The dates of the events and the event set up are provided within Table 1 below."

Which, as I understand it, is taken from the table which was submitted in support of the application. Returning to the quoted paragraphs:

"2.5 The proposed site build/deliveries for the events would start to arrive on site on 11 May. The last live event to be considered under this application would be the Mighty Hoopla, which takes place on 1 June 2025. This LDCP application is only for the proposed live events, Wide Awake, Mighty Hoopla, City Splash, Cross the Tracks and Brockwell Bounce. Officers acknowledge that there are further events taking place on the site as outlined above and included in the table below. Therefore, infrastructure, including the fencing, will remain in place till after the dates this application is seeking confirmation of permitted development for. This is due to the Lambeth Country Show commencing on 7 and 8 June 2024 and shared infrastructure is proposed and is under separate consideration as a Full Planning Application which would cover his event."

The date is clearly intended to be 2025.

"2.6 In total, the event under this application including rigging of some structures and fencing would be 22 days. Should full planning permission not be granted under 25/00693/RG3 then the temporary structures and any fencing would need to be removed following the events as detailed in this application, within the remaining permitted development days which is discussed in the assessment below.

2.7 The proposed host date(s) and set up period(s) for these events, which are to be covered under this Certificate of Lawfulness for 2025 are included in the table below. This information has been submitted by the applicant. How these various periods fall to be treated for the purposes of assessing the availability of permitted development rights and are addressed in more detail below. It is noted that the daily activities may be subject to minor changes, however this does not and would not materially affect the proposal."

Then a table of events is given from Sunday 11 May through to Sunday 1 June in accordance with the information provided in support of the application.

36. At section 4, headed "Legal context", there is the following:

"4.3 The key for consideration in this application is whether the proposed use of the land would be permitted development. The class of permitted development relevant to the application is contained in Schedule 2, Part 4, Class B of the GPDO relating to temporary use of land and the provision on the land of any movable structure for the purposes of the permitted use. ...

4.6 If an LPA is satisfied that the proposed use of land and/or operations proposed to be carried out on land would be lawful if instituted or commenced as at the date of the application, the LPA is required by section 192 of the Town and Country Planning 1990 to issue a certificate to that effect. Section 192(3) of the 1990 Act sets out the details that must be given in any certificate that is issued."

37. The assessment of the application is set out in some detail in section 5 of the officer's report. Having referred again to the events comprised in Brockwell Live 2025 and to the Class 4 Part B permitted development right, the report at paragraphs 5.3 and 5.4 refers to the need for temporary structures and infrastructure of a moveable nature to be brought onto the site in order to enable the events to be carried out.

38. In relation to the computation of the number of days in the calendar year, the following is said in paragraphs 5.5 to 5.9:

"5.5 The computation of the number of days per calendar year (January to December) requires consideration. There are two issues to be addressed in this respect.

- The extent of the geographical area against which the annual 28-day allowance should be assessed.
- How the number of days taken up by the temporary use should be tallied and, in particular, the extent to which account should be taken of set up and de-rig days when considering whether the land is being used for the temporary purpose.

5.6 Officers have looked at the number of organised events in Brockwell Park which have taken place or are planning to have taken place prior to 11 May 2025. Taking this approach means that organised events occurring at various locations within the park are taken account of in assessing whether the 28 day limit has been reached upon consideration of this certificate.

5.7 The applicant has provided key dates for the events, including the host dates, set up period, events timetable and de-rig period. These are included in the applicant's submitted information within 'Appendix 1 - Build and Break 2025'. The time period being considered under this lawful development application are scheduled to take place in Brockwell Park between 11 May to 1 June 2025. Further event dates from 2 June until 18 June 2025 are the subject of an application for full planning permission and are not being considered under this application.

5.8 The build period for the events is set out in Table 1 and will commenced on 11 May until the first event on 23 May. On the first day of rigging, various areas of activities are marked out and tracks are laid out. From 11 May, the beginning of the delivery/installation of the fence. From 14 May, installation of structures including the main stage commence. The building of the stages is to be completed by 22 May. Officers consider that the change of use begins when the fencing is beginning to be erected. This is due to the fencing creating an enclosure which prevents the space it occupies being used.

5.9 The Brockwell Live events end by 1 June. From this date, full planning permission has been sought from 2 June until 18 June."

39. The officer then turned to consider when the proposed material change in the use of the land from use as public open space to use as temporary event space should be taken to begin:

"5.10 Class B permitted development rights concern the temporary use of land for one of the purposes authorised by that class. When a use starts and stops will depend on the facts of an individual case. In considering this, a judgment may need to be made about when the land can be said to have taken on the new use.

5.11 Officers are of the view that, in respect to the public park, the change of use will have started at that point that the fencing begins to be erected. This is due to parts of the site being screened and inaccessible for recreational activities associated with park space. From the submitted information the fencing will start to be erected from 11 May 2025. Officers consider that the change of use will cease only when the de-rig process is completed. As noted, the full de-rig of the site along with further events are being submitted for consideration under full planning application."

40. 5.12 sets out a table which is introduced as follows, "Officers consider that this Lawful Development Certificate results in the following ...", and then a table sets out two periods of activity. Firstly, first day of rigging and fencing, set up for events between 11 and 22 May, a total of 11 days, and then Wide Awake, Mighty Hoopla, City Splash, Cross the Tracks and Brockwell Bounce during the period between 23 May and 1 June, a period of ten days, which is computed in total to constitute 22 total permitted development days. It is slightly odd because arithmetic suggests it is 21, but it does not perhaps much matter in the context of this challenge.

41. Resuming the quotation:

"5.13 As such, the temporary use of parts of Brockwell Park for the events identified in Table 1 is considered to take up 22 days of the calendar year 2025. The result of this is that the setup and use of parts of the park for events would fall within the 28 day allowance for a temporary use provided for in Schedule 2, Part 4 Class B of the GPDO.

5.14 Whilst it does not form part of the certificate, officers have taken into account other temporary activities which have

taken place in Brockwell Park to date in the calendar year of 2025. Officers have been made aware of one permitted development use, Pines and Needles, which remained on the site until 4 January 2025 and used four permitted development days. Officers have been informed by the events team that there are no other programmed events to take place in Brockwell Park prior to the setup for Brockwell Live in May 2025."

42. There then follows at paragraph 5.15, upon which Mr Harwood placed particular reliance:

"Planning permission is sought for the Lambeth Country Show and de-rigging of the site under application 25/00693/RG3. The dates stipulated in the planning application are from 2 June until 18 June. If planning permission is not granted, the applicant will have to clear the site within the remaining days."

43. The conclusions set out in 6.2 read:

"Officers conclude that the proposed use of land for these events would be lawful. Having regard to the organised events that have taken place in the same calendar year, the temporary use does not exceed 28 days and that use falls within the scope of the permitted development rights contained in Schedule 2, Part 4 Class B of the GPDO."

44. Section 8 sets out the reasons for the recommendation to grant the certificate, those reasons being in the same terms as those shown on the face of the certificate to which I have already referred.

## **Submissions**

45. For the claimant, Mr Harwood KC submitted that the proposed use of the park for temporary events space as described in the application form was for a period in excess of 28 days. The application form gave details of a temporary change in use of that area of the park shown on the submitted plan in order to accommodate the holding of the Brockwell Live events. The use was stated to involve both the installation and deinstallation of associated temporary structures and infrastructure. It was stated that the build period for such events would begin on 11 May 2025. The Build and Break

table showed that, following the conclusion of the Brockwell Live events themselves, there would be a period of deconstruction and de-rigging of temporary structures, including stages which had been used for those events. However, three stages (stages 1, 4 and 6) and the fenced enclosure would remain in position subject to some minor variation, in order to accommodate the Lambeth Country Show to be held on Saturday 7 and Sunday 8 June 2025, with full load out not being completed until Monday 16 June.

46. Mr Harwood relied upon the principles stated by the Court of Appeal in *Ramsey* at [46] and [49] to which I have referred. The critical consideration in determining whether a proposed temporary use of land would fall within the scope of the Class 4 Part B permitted development right is the duration of that use following its commencement. The use will endure until the land reverts to its normal use. In this case, on the basis of the proposed use described in the application and the details of the temporary use provided in the application form and its supporting documents, the period between commencement of the temporary use and the reversion to the normal use of the park as public open space was 37 days, that is to say the period between 11 May and 16 June.
47. It followed, submitted Mr Harwood, that the defendant had erred in law in granting the certificate. The proposed use was not lawful within the meaning of section 191(2) of the TCPA. It was development. It required planning permission. It fell outside the scope of the Class 4 Part B permitted development right as it would endure for a temporary period in excess of 28 days in the calendar year 2025.
48. Mr Harwood submitted that the planning officer had erred in excluding the period following the conclusion of the Brockwell Live events on 1 June 2025. Her key reasoning was at paragraphs 5.11 to 5.15 of her report. She had excluded the period between 2 June and 16 June in reliance on the prospect that the activities proposed for those dates, including the holding of the Lambeth Country Show, would be the subject of a later grant of planning permission. That was an error of law. The result was that she had failed to take account of the de-rigging and removal of the stages and other equipment required for the Brockwell Live 2025 events in the period between 2 and 6 June, and also the continuation of the proposed temporary use for the Lambeth

Country Show until 16 June, which was the date on which full de-rig was to be completed and the land to revert to its normal use as public open space.

49. In response for the defendant, Mr Matthew Reed KC submitted that the certificate had simply and quite properly certified the lawfulness of use of the park for the dates specified in the first schedule. The planning officer had correctly identified the date on which the material change of use from use as a park to use as a temporary event space would occur on the basis of the evidence submitted with the application. That date was 11 May 2025 when the fence went up. The certificate was clear in certifying the lawfulness of that use until the conclusion of the Brockwell Live 2025 events themselves on 1 June 2025. There was no legal error in that certification. The period of 22 days was indeed within the permitted development right, allowing for the period of up to four days of use for the Pines and Needles event in early January 2025.
50. The planning officer had recognised that event related activities were proposed to continue after 1 June and to conclude following the holding of the Lambeth Country Show, but her approach was lawful. Either those further event related activities would be authorised by planning permission already applied for, or failing that, the use would have to cease on the 28th day and the site be cleared on the remaining days within that permitted 28 day period under the permitted development right, before the park reverted to its normal use as public open space.
51. The planning officer, he submitted, had properly based the decision on: firstly, the nature of the use applied for; and secondly, the certificate applied for as clarified by the interested party. Thirdly, she had addressed those matters rationally in the exercise of proper judgment. The nature and extent of the proposed use was a question of fact and degree for the defendant: see *R (on the application of Dennis) v Sevenoaks District Council* [2004] EWHC 2758 (Admin); [2005] 2 P&CR 4 at [32].
52. Mr Reed submitted that the defendant's duty was to determine the application on the basis of its judgment of the nature and extent of the use described in the application. Section 192 of the TCPA might have said "the use specified in the application", but it did not do so. The intention was that the local planning authority should form a judgment as to the character of the use described and consider the question of

lawfulness and certification on that proper basis. The planning officer had done just that.

53. Dr Bowes for the interested party adopted Mr Reed's submissions.

## **Conclusions**

54. In my judgment, Mr Harwood's submissions are essentially correct. The question raised by the interested party's application was whether the proposed change in the use of the park from use as a park (public open space), to use as temporary event space was authorised by the planning permission granted by Article 3(1) and Part 4 Class B of Schedule 2 to the GPDO. The details given in the application form, supported by the information in the Build and Break table, described a use that would begin on 11 May with the erection of the fence enclosure and other initial works. On the basis of the information provided in the Build and Break calendar and the Stage Usage table, use of that area of the park would not revert to its normal use as a park until full site load out had been completed on Monday 16 June 2025, following the holding of the Lambeth Country Show.
55. In *Ramsey*, the Court of Appeal emphasised that in considering whether a temporary use of land falls within the scope of the Part 4 Class B permitted development right, the duration of the proposed temporary use is the critical factor; and that question is to be judged by reference to the date on which the land in question reverts to its normal use.
56. It is self-evident that in considering the duration of a proposed temporary use of land, the decision maker must determine not only the date on which the change to that temporary use is to occur but also the date on which the land is to revert to its normal use. On the evidence before the defendant in support of this application, each of those dates was clear. The period between those dates, that is the period during which the park would be in use as event space prior to its reversion to the normal use as a park, was 37 days. On that simple and incontrovertible analysis, the application for the certificate could only be refused.

57. The reason why the certificate was granted is equally straightforward. Although the planning officer recognised that the use of the park as temporary event space would endure beyond 1 June (when the Brockwell Live 2025 event itself would end), she discounted the remaining days of its temporary use for that purpose until full load out on 16 June and reversion to normal park use on that date, on the basis that planning permission might be forthcoming to authorise the Lambeth Country Show.
58. As Mr Harwood rightly pointed out, that was a legally irrelevant consideration. The statutory test for lawfulness is that stated in section 191(2) of the TCPA. The mere possibility of a future grant of planning permission for a proposed use provides no proper basis for a conclusion that enforcement action may not be taken against that use.
59. As at 2 January 2025, which the defendant took to be the date of the interested party's application, the proposed change of use of the park from public open space to temporary event space constituted development requiring planning permission. The sole asserted basis on the facts before the defendant for the necessary proposition that no enforcement action could be taken in respect of that proposed development on that date, was the existence of the Part 4 Class B permitted development right. For the reasons I have given, that did not authorise the proposed development, because the duration of that proposed use exceeded the 28 day limit prescribed by that planning permission.
60. The planning officer's alternative analysis that the use would have to cease on the 28th day was also wrong on the basis of the use described in the application. It was clear that the proposed use would continue beyond the 28th day, since the temporary event use described in the application and its supporting tables was to endure until the 37th day following its commencement. Applying the critical factor of duration to the use described in the application, the decision to grant the certificate was irrational.
61. For these reasons I find both grounds of challenge to be made out.
62. In written submissions, the defendant and interested party invited me to refuse relief on the application of section 31(2A) of the Senior Courts Act 1981. I decline to take that course. In the light of my analysis, it is obvious that, far from it being highly likely

that the outcome would not have been substantially different had the conduct complained of not occurred, the outcome in this case would almost certainly have been refusal of the certificate. That conclusion is unaffected by Dr Bowes' submission about the correct date to be identified as the date of the application for the purposes of section 192 of the TCPA. Thirty seven days is incontrovertibly beyond the scope of the permitted development right.

63. I shall accordingly grant permission to apply and allow the claim. There will be an order quashing the Lawful Development Certificate.
64. There was some argument at the hearing about the consequences of my decision. In particular, there was debate as to whether the works to the lido entrance should count for the purposes of applying the permitted development right, how many of the four days of use of the park for Pines and Needles should count for the purposes of redetermining the application and the impact of the planning permission subsequently granted for the holding of the Lambeth Country Show.
65. Those are all matters which the defendant may need to consider in the light of my decision and in judging the way forward with regard to the Brockwell Live 2025 event which is now being set up.
66. What I will say is that the Lambeth Country Show is now clearly authorised by the planning permission granted on 7 May 2025, but it would be inappropriate for me to trespass further into those matters which are properly to be addressed by the defendant under the statutory scheme of the Town and Country Planning Act 1990.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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