PROPERTY MANAGEMENT

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REFERENCE
GN02-22

TEMPORARY STRUCTURES INCLUDING MARQUEES FOR EVENTS – PLANNING AND HERITAGE ISSUES

(This guidance note replaces GN18-21 which should be deleted from your files)

A. PREFACE

Marquees and other temporary structures can be useful or essential in generating income to fund the maintenance of heritage, or facilitating its opening to the public, but there is a major problem: local authorities are usually extremely reluctant to grant planning permission.

The purpose of this Guidance Note is to provide guidance on whether temporary structures need planning permission and/or heritage consents; and, if they do, on how you can maximise the chances of getting consent(s) in practice. The issues can be complex (there is a Summary in section E below). This Guidance Note particularly focuses on heritage cases.

Lobbying by the CLA, Historic Houses, and others has recently secured two additional permitted development rights for temporary structures, initially granted in 2020-21 to mitigate the economic impacts of Covid, and now made permanent from 2 January 2022. These are described below in Section C (c), parts (iii) and (iv). The CLA is keen to encourage members to use these and to report to us on their usefulness (or otherwise) in their current form.

This Guidance Note was most recently revised 6 January 2022.

B. INTRODUCTION

Local planning authorities (LPAs) have had a longstanding and strong reluctance to grant planning permissions for temporary structures, especially near heritage. Temporary permissions are seen as "dangerous", somehow more "dangerous" than permanent planning permissions, and temporary structures as "inappropriate" by definition anywhere near heritage. The reasons for these views are somewhat opaque, perhaps reflecting a lack of experience with temporary permissions, a lack of sufficient national planning guidance on the subject, status quo bias, and/or a strong reluctance to accept that the need to fund the maintenance costs of heritage is a material consideration in planning decisions. The result is that to a significant extent those needing temporary structures are forced to operate outside the planning system, and are vulnerable to enforcement action, a particular problem when bookings (for example for events or weddings) are taken well in advance.

Advice issued by Historic England (then English Heritage) in 2010, after years of CLA lobbying, increased the probability of getting consent in these cases (see sections C and D below), and the CLA has now achieved improved permitted development rights for temporary structures, but it is important to be aware of the issues, especially when making applications.

This Guidance Note should be used with the CLA Guidance Note *Heritage: Getting heritage and heritage-relevant planning consents*. All CLA heritage Guidance Notes are available from the Advice page on the CLA website www.cla.org.uk, by filtering for "heritage".

This Guidance Note is directly applicable to **England**, but the principles are similar in **Wales**. There is no Wales guidance specifically on temporary structures near heritage, but for that reason it should be possible to refer, tactfully, to the Historic England advice as above.

C. DO I NEED PLANNING PERMISSION FOR A TEMPORARY STRUCTURE?

Introduction

This section ignores heritage issues, which are covered in section D below. In summary, the key issue – in **the Town and Country Planning Act 1990** ('the 1990 Act') **s55** – is to decide whether the temporary structure constitutes '**development**', in which case planning permission is required. 'Development' is defined as either a '**building or engineering operation**' – see **(a)** immediately below, or a '**material change in the use of land**' – see **(b)** below.

However, in some cases in which planning permission is required, it is deemed already to have been granted, under the **Town and Country Planning (General Permitted Development) (England) Order 2015** ('**GPDO**'). In these '**permitted development**' cases no actual planning application is needed – see **(c)** below.

For cases of doubt, see **(d)** below, and the 'Summary' and 'Strategy' sections at the end.

(a) Building and engineering operations'

Each case will turn to an extent on its individual facts, but in judging whether something amounts to a 'building or engineering operation', courts have consistently looked at three main factors: (i) size, (ii) 'permanence', and (iii) physical attachment.

This approach was particularly endorsed by the Court of Appeal in *Skerrits of Nottingham v Secretary of State for the Environment, Transport and the Regions* (2000), which concerned the erection of an extremely large marquee, 40m x 17m, in the grounds of a hotel. The Court of Appeal held that the marquee, which was erected on the lawn "every year for a period of eight months was, due to its ample dimensions, its permanent rather than fleeting character and the secure nature of its anchorage, to be regarded as a building operation. The annual removal of the marquee did not deprive it of the quality of permanence. Permanence did not necessarily connote that the state of affairs was to continue forever or indefinitely."

Similar tests were applied in a later High Court decision *Hall Hunter v First Secretary of State and others* (2006). It was held that polytunnels with a length of 50-100m, covering a total area of 30-40ha, in place for 3 to 7 months of the year, and attached to the ground with metal hoops, did involve a 'building operation'.

It seems clear that the erection of a large marquee, or any such substantial structure, for several months of the year is likely to be a 'building operation', and thus 'development' requiring planning permission.

However, a structure which is smaller, less permanent, and/or not substantially attached may not constitute a 'building operation'. It will depend on the individual facts of each case (see (d) below). In *Hall Hunter* three months could be enough to create 'permanence', but (as in *Skerrits*) the structures there were very large. A small or medium-sized structure, in place for say one or two (or perhaps more) months, and held in place by weight rather than fixings, may not amount to a 'building operation'. In particular, **a marquee erected for a few days for a private party or wedding reception almost certainly will not**.

Any significant **ground preparation works** for a temporary structure could in themselves constitute a 'building or engineering operation' requiring planning permission. (Note however that, "within the curtilage of a dwellinghouse", the **General Permitted Development Order, Schedule 2, Part 1, Class F** deems planning permission already to exist for "the provision…of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such", so that where this applies a planning application may not be needed, though some conditions apply. For the extent of 'curtilage', see (c) (i) below).

(b) 'Material changes of use'

As above, 'development' can also consist of a '**material change in the use** of the land'. Even if a temporary structure is not a 'building operation', planning permission could be needed if its use amounted to a 'material change of use'.

A marquee for one or two private parties in the garden of a private house should not be a change of use, because such parties are 'incidental to the enjoyment of' houses and their gardens. That would probably remain the case if the marquee was also used for a charitable event, or (perhaps) hired out briefly. But a marquee regularly hired out commercially for a

number of parties, or used for retail purposes, probably would amount to a material change of use, because these are essentially business, rather than residential, uses, and planning permission would be required [1]. Conversely, a hotel using a marquee for parties or events would probably not involve a 'material change of use'.

(c) Is permission already deemed to have been granted under the General Permitted Development Order?

Where planning permission is required, it may however be deemed already to have been granted by the **General Permitted Development Order** (**GPDO**) **2015** (as amended). This, although consolidated and tidied up in 2015, is a complex document. Four separate sections of the GPDO are potentially relevant to temporary structures:

(i) The "28-day rule"

The **GPDO**, in **Schedule 2, Part 4, Class B**, grants planning permission for **"the use of any land for any purpose for not more than 28 days [2] in total in any calendar year… and the provision on the land of any moveable structure for the purposes of the permitted use"**.

This permitted development right is widely used in practice for many purposes, including temporary structures. It does not apply if "the land in question is a building or is within the curtilage of a building" (and there are some other restrictions, e.g., in SSSIs, and on markets). But **if the site is not within the curtilage of a building, and you do not exceed the 28-day limit, you should not need to make a planning application for a temporary structure**.

In interpreting this it is important to note, firstly, that the 28 days is a total number of days: it does not mean that you can hold 28 events and erect a marquee for 4 days for each. And if you have already had say 7 days of some other use permitted only because of the GPDO, that reduces the 28-day total commensurately. It is also vital to remove the structure entirely after use, and all other features like dustbins.

Secondly, as above it must not be in the curtilage of a building. 'Curtilage' is not defined in statute but is often considered in case law [3]. The curtilage of a house and small garden is likely to include the whole area owned, but where a larger area is owned this may not be the case, especially where there are areas whose use relates less directly to the dwelling, and/or physical boundaries. A front lawn, back yard and parking area probably are within the curtilage; further areas of garden or wood might be, depending on their use and relationship with the building; agricultural land and buildings probably are not. Curtilage is sometimes explained as "ending at the ha-ha"; in other words, the lawn/garden of a house, are included, but not agricultural land beyond.

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[1] There may also be other implications not covered here, like business rates, and CGT and/or IHT.
[2] This was increased in most cases to 56 days as a Covid relief measure up to 1 January 2022, but that extension is no longer in place. The CLA has been seeking a further temporary extension.
[3] The most recent case which considered curtilage in detail is *Blackbushe Airport* (this will be too detailed for most users of this Guidance Note, but if you do explore this subject, it is important to use the 2021 Court of Appeal judgement, not the 2020 High Court case).

A third point is that some or all permitted development rights under the GPDO can be specifically removed by the LPA using an '**Article 4 Direction**' under the GPDO. Article 4 Directions are relatively unusual, though are more likely to be used in National Parks, AONBs, World Heritage Sites, and Conservation Areas (LPAs sometimes tell you that being in such areas automatically removes all permitted development rights, but this is not the case).

(ii) **'Buildings required temporarily'**

The **GPDO Schedule 2, Part 4, Class A** says that a planning application is not needed for the provision of **buildings etc "required temporarily in connection with and for the duration of operations being or to be carried on, in, under or over… land…"**. This refers to 'operations' rather than 'uses', but in some cases, LPAs have agreed that temporary structures used for events are covered by Class A.

(iii) **Restaurants, pubs, cafes, etc which are not listed buildings**

Where a temporary structure will be used for the purposes of a **restaurant, café, pub, or premises used for the sale of food and drink mostly for consumption on the premises** [4], **GDPO Schedule 2 Part 2 Class G** [5] **now** [6] **allows the provision of one moveable structure, year-round, within the curtilage**. This does not apply to a listed building (but see Class BB as below) or a scheduled monument, or land in their curtilages. It also does not apply if the moveable structure is within 2m of the curtilage of any adjacent land used as a dwelling. The height of the structure must not exceed 3m, and its footprint must not exceed 50% of the footprint of the building (or 50m^2, whichever is less).

(iv) **Listed buildings which are 'historic visitor attractions'; or restaurants etc**

Where a temporary structure will be used for the purposes of a building which is either a '**historic visitor attraction**' (see below), or a **restaurant, café, or pub, etc** [7], **which is listed**, **GDPO Schedule 2 Part 4 Class BB** [8] **allows** [9] **the provision of one moveable structure, within the curtilage**. The height of the structure must not exceed **3m**, and its footprint must not exceed **the lesser of 50m^2, or 50% of the footprint of the building**. This does not apply if the moveable structure is within 2m of the curtilage of any adjacent land used as a dwelling, and it does not apply to "a scheduled monument or land in its curtilage". 'Prior approval' is required as below.

A '**historic visitor attraction**' is defined as "a listed building accessible by members of the public (whether or not for an entry fee) for the purposes of promoting their enjoyment, and advancing their knowledge, of the building". This clearly requires actual public opening (at least to the outside, and probably inside) for "advancing knowledge", and opening clearly needs to include availability to the general public, i.e., not just for

[4] For more precise definitions, see the GPDO Schedule 2 Part 2 Class G (or the December 2021 Statutory Instrument if the GDPO has not been updated - see next footnote).
[5] The GPDO had not been updated when this Guidance Note was updated, so this link is to the December 2021 Statutory Instrument.
[6] This was permitted temporarily in 2020-21 and made permanent from 2 January 2022.
[7] For definitions of restaurant etc, see GPDO Schedule 2 Part 2 Class G as above.
[8] The GPDO had not been updated when this Guidance Note was updated, so this link is to the December 2021 Statutory Instrument.
[9] This was permitted temporarily in 2021 and made permanent from 2 January 2022.

private parties. There is no minimum opening period. Opening under (say) the Historic Houses 'Invitation to View' scheme may well be enough, especially if several times a year, but just showing a few WI members around every 5 years clearly would not.

The moveable structure must be "for the purposes of" the historic visitor attraction. This is not further defined. It would clearly cover a structure used as a ticket office, café, or interpretation/education space. It would probably cover the additional use of that same space for income generation out of opening hours, for example using a café space for events or parties, on the basis that the income helped to fund the opening. It is not so clear that Class BB would cover a moveable structure being used only for income generation, unless perhaps it was very clear that the income funded the opening and maintenance of the 'historic visitor attraction'.

50m^2 (538ft^2) is not a very large structure, but it may well be enough for a ticket office or café, as above, and for small events or parties, wet-weather fallback for outside events, or spill over space for buildings with small rooms.

There are three **restrictions** on Class BB which exceed those in Part 2 Class G above:

(a) Firstly, the use/presence of the moveable structure is **limited to a period totalling 120 days in each year**. This is a lot more than the 28-day period in Part 4 Class B as above and does not have to be all at once (though if you do not use the 120 days all at once, the structure needs to be removed between the periods of use).

(b) Secondly, Class BB requires an **application** to the LPA for '**prior approval**'. This requires a physical application, and a fee (though this is less than a normal planning fee). Paragraph BB.3 sets out the procedure. The owner ('developer') is required to produce a **written description**, a **site plan**, and a **statement** about installation and reinstatement. The LPA can demand further information (under (8), but only 'reasonably'). If you want to use the/a moveable structure in subsequent years, you will need to make an application (as below) each year (though this might be identical each year). For more detail, see the shaded box below.

(c) Thirdly, the LPA if it grants prior approval can set **conditions** "reasonably related to the subject matter of the prior approval". This may allow problematic conditions to be added in some cases (again, see the shaded box below).

Additional advice on Class BB

Class BB should be a significant step forward, because it allows further moveable structures as permitted development, and (unlike the "28-day rule") within the curtilage of a building, and also within the curtilage of a listed building. Moreover, it allows this for up to 120 days a year, not just 28. It has taken a considerable amount of work to get Class BB, and t**he CLA therefore encourages members to use Class BB** (where applicable).

A potential issue is the 'prior approval' requirement. Under BB.2 (b), Class BB is subject to prior approval by the LPA of (only):

(i) the siting of the moveable structure, and

(ii) the method by which it is to be installed.

Siting and installation should be merely technical issues: under BB.3 (3), the LPA can refuse the application, but only if the development does not comply with the Class BB conditions; if the applicant meets the technical conditions for Class BB, i.e., size etc, approval should not be refused (and if refused, it can be appealed).

BB.3 (5) however says that the LPA has to consult HE on receipt of the application, and (7) requires it to put up site notices/consult adjoining owners/occupiers. Then, under (9), the LPA must take into account:

(a) Any representations from HE, neighbours, or anyone else who comments.

(b) The NPPF, "so far as relevant to the subject matter of the prior approval, as if the application were a planning application".

There is a possibility that some LPAs, given the traditional LPA antipathy to moveable structures of any kind, may quote (9) in isolation as a reason for refusing approval. If this seems to be a problem, you may need to point out:

(i) that BB.2 (b) says that the LPA's prior approval is only of "the siting of the moveable structure, and the method by which it is to be installed".

(ii) that BB.3 (3) only allows the LPA to refuse applications where "the proposed development does not comply with… any conditions and limitations specified in Class BB as being applicable [i.e., the technical BB conditions like size and height] …" or "where the developer has provided insufficient information to enable the authority to establish whether the proposed development complies" [10].

(iii) that BB.3 (9) (b) says that the NPPF can only be taken into account "so far as relevant to the subject matter of the prior approval" (you could make arguments from the NPPF in favour of the proposal, though both sets of arguments might be technically irrelevant).

(iv) that **the GPDO has already established that, in principle, permission should be granted**. PPG paragraph 109 [11] (in reference to an analogous GPDO prior approval right, GPDO Schedule 2 Part 3 Class Q) says that "When considering whether it is appropriate for the [development] to take place in a particular location, a local planning authority should start from the premise that the permitted development right grants planning permission, subject to the prior approval requirements. That [the development] is in a location where the local planning authority would not normally grant planning permission for [it] is not a sufficient reason for refusing prior approval… When a local authority considers location and siting in this context it will not… be appropriate to apply tests from the National Planning Policy Framework except to the extent these are relevant to the subject matter of the prior approval. So [other] factors are unlikely to be relevant".

[10] It may be helpful to know that this, and much of the detailed text of Class BB, comes from GPDO Schedule 2 Part 3 paragraph W.
[11] This is in the *When is permission required?* chapter of the PPG - scroll down to paragraph 109, about three-quarters of the way through the whole chapter.

As above, **the CLA encourages members to use Class BB, but it is important to:**

(a) ensure that you comply with all the technical conditions, on size, height, etc (and remember that Class BB only allows a moveable structure, not (say) permanent hardstanding or water pipes, which would probably require a separate planning application).

(b) make a sufficiently detailed application, with details and justification of siting and installation, showing that heritage and other benefits have been maximised and any harm eliminated or minimised, and quoting BB.3 (3) etc as above. **If necessary, appeal a refusal, but never assume that a planning inspector is familiar with the law and policy - it is important to make a strong case including as above**.

(c) please inform the CLA (jonathan.thompson@cla.org.uk)**, if the LPA creates difficulties with a (compliant) Class BB application, refuses it, or sets conditions which limit its usefulness, or if you cannot make a Class BB application because BB is too restricted (e.g. because the 50m^2 limit is too small). We are ready to report problems to Government, but we can only do that if we know what they are, and if we have no evidence, we are unlikely to secure any positive change!**

(d) Planning permission – cases of doubt

It will be clear from all the above that the planning position can sometimes be unclear. You can of course seek professional advice. The conventional recommendation is to "ask the LPA" whether the proposed structure requires planning permission, but the major problems with this in practice are that LPAs are short of the skilled staff needed to give accurate answers to such questions, and that they seldom take a positive view of temporary structures. Except perhaps for a one-off domestic event, the LPA may well say that planning permission is required, even if it is not. Moreover, even if it did say that consent is unnecessary, this does not necessarily protect the owner against later enforcement action.

A more formal alternative (provided the activity has not already commenced) is to seek from the LPA a **Certificate of Lawfulness of Proposed Use or Development** (**CLOPUD**) under s192 of the Town and Country Planning Act 1990. The overall cost of this may be almost as high as for a planning application, but it does allow the applicant to argue that the structure is not 'development', or is permitted under the GPDO, or is covered by an existing planning permission, which may increase the chance that the LPA will agree. If so, the LPA must grant the CLOPUD, even if it thinks the proposal undesirable, and it cannot apply conditions as it would on a planning consent.

If the owner does make a planning application, it is likely – except perhaps in minor straightforward cases – that it will be refused, on "inappropriateness" or "visual amenity" or Green Belt grounds, and a refusal might well be upheld at appeal (see 'Summary' and 'Potential strategy' below).

Normal planning considerations like access, traffic generation, and noise, are of course all potentially material. A planning application should address these issues, and show that they

are not relevant, or will be managed so as to minimise their impact. It may be helpful to have local support, rather than objections, though in practice local support is often of limited value.

A possible option is to proceed without planning permission. If planning permission is not required, going ahead is obviously lawful in planning terms, though the LPA might try to take action if it dislikes the proposal, or disagrees that planning permission is not needed. If planning permission is required, proceeding without it is not a criminal offence, but the LPA can take **enforcement** action (though it must be 'expedient' for it to do this [12]), requiring the owner to abandon the use and/or reinstate the land to its former condition. Failure to comply can become a criminal offence. An obvious problem is that you are in thrall to any neighbour who might complain, and you may have to remove the structure before you intended to, and may not be able to re-erect it later, which may be a problem if you have (say) taken bookings for future events.

If you have already been erecting temporary structures without planning permission for some years, you may be able to seek a **Certificate of Lawfulness of Existing Use or Development** (**CLEUD**) under s191 of the 1990 Act. After four years (for 'operational development') or 10 years (for 'material changes of use') a CLEUD must be granted automatically, even if the activity was not lawful, and the LPA cannot add conditions. In some cases, this can be a much better starting point than a planning application, which the LPA of course has discretion to refuse. The application of this rule to temporary structures can be uncertain (LPAs may try to claim, very possibly wrongly in view of *Skerritts* above, that the activity "ceased" each time a temporary structure was removed), but there are cases in which a CLEUD has confirmed the permanent legitimacy of temporary structures and uses over a wide area of land.

There is a CLA planning Guidance Note on CLOPUDs and CLEUDs.

(e) Temporary and permanent consents, the use of conditions in planning permissions, and guidance on the use of planning conditions

A planning consent is made temporary by imposing a condition requiring the later removal or cessation of the development. Guidance on the use of conditions is set out in the national Planning Practice Guidance (PPG). The main aim, including in the chapter Use of Planning Conditions, is to limit conditions to those which are sensible and appropriate. Paragraph 014 of this section concerns temporary development. It says "Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. A temporary planning permission may also be appropriate to enable the temporary use of vacant land or buildings prior to any longer-term proposals coming forward (a 'meanwhile use'). It will rarely be justifiable to grant a second temporary permission (except in cases where changing circumstances provide a clear rationale, such as temporary classrooms and other school facilities). Further permissions can normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning permission will then be granted permanently."

The implication is that you, and ideally the local authority, should consider properly whether a temporary or permanent permission is most appropriate. If you want a summer marquee to

[12] see s172 of the 1990 Act, and the CLA Guidance Note *Heritage enforcement and prosecution*.

generate income your requirement may actually be permanent even if the structure is removed each year. Although many local authorities seem in practice to be more alarmed by a temporary consent than a permanent one, in some cases it may be appropriate to seek a temporary consent for a trial period only. If you get this, you can then seek a permanent consent before the trial period is over, basing your case on the benefits, this PPG paragraph, and the absence of problems during the trial period. The local authority may resist a trial consent, but of course if the trial causes problems it would then have reasons to refuse a permanent consent, and if there were no problems it would then seem reasonable to grant the permanent consent.

D. HERITAGE CASES

(a) Listed buildings and their settings

There are two separate issues here. Firstly, under Section 7 of the **Planning (Listed Buildings and Conservation Areas) Act 1990**, any "works of demolition, alteration, or extension to a listed building which would affect its character as a building of special architectural or historic interest" will require Listed Building Consent (LBC). This requires an application to the LPA, and it is a criminal offence to carry out such works without consent. But **if there is no physical work to the listed building, LBC is not needed**. (It should be noted that other pre-1948 historic structures within the planning curtilage of the listed building, and ancillary to it, may well be covered by the listing ('curtilage structures'), so that (say) cutting a doorway through a garden wall may require LBC, even if the wall is not itself mentioned in the list description). For further advice on whether LBC is needed, or on what is (and is not) covered by listing, see the CLA Guidance Notes *Listed buildings - when do I need consent?* and *What listing includes*.

Secondly, where **planning permission** is required (irrespective of the need for LBC), the effect of the development on any listed building(s) or other heritage assets, not necessarily in the same ownership, and more especially on their **settings**, is a '**material consideration**' which can be taken into account, and could in some cases justify the refusal of planning permission, or its grant subject to additional conditions. At least up to the publication of the 2010 Historic England guidance (see (d) below), LPAs were usually looking to find that temporary structures would have an unacceptable effect on listed buildings and their settings.

Note that where listed buildings are involved and planning permission is required (irrespective of the need for LBC), **permitted development rights** under the GPDO are to some extent reduced, but this mostly does not affect those referred to above (permitted development rights are not withdrawn in full for listed buildings, though LPAs sometimes claim otherwise).

(b) Scheduled Monuments and their settings

Similarly, there are two main issues here. Firstly, under the **Ancient Monuments and Archaeological Areas Act 1979**, any physical works to a Scheduled Monument, above ground or below, require Scheduled Monument Consent (SMC). Merely placing a structure on a Scheduled Monument would probably not require SMC, unless its weight or the ground conditions could lead to damage, but any excavation or (say) driving angle irons into the ground is likely to be work requiring SMC. Guidance on this is set out in *Scheduled Monuments: identifying, protecting, conserving and investigating nationally important archaeological sites*

under the Ancient Monuments and Archaeological Areas Act 1979 (DCMS, 2013). There is also a **CLA Guidance Note** *Archaeological features including scheduled monuments on your land*.

Secondly, where **planning permission** is required, the effect of the development on any monument, scheduled or not, and/or its **setting**, could be a 'material consideration' which can be taken into account and could in some cases justify the refusal of planning permission, or its grant subject to appropriate conditions.

(c) Other designated heritage assets and their settings – Conservation Areas, Registered Parks and Gardens, Registered Battlefields, and non-designated heritage including local-heritage-listed heritage

Where planning permission is required, any impacts on these forms of heritage asset and their settings again are 'material considerations'.

(d) Heritage policy and guidance

General national planning policy is set out in the **National Planning Policy Framework** (**NPPF**), including especially its chapter on the historic environment, the **Planning Practice Guidance** (PPG), and in advice from Historic England including its **Good Practice Notes** (especially GPA3 on **setting**). These are discussed in more detail in the CLA Guidance Note *Getting heritage consents* mentioned in section B above.

The key starting point for temporary structures is the Historic England (then English Heritage) advice ***Temporary Structures in Historic Places*** (2010), which sets out the key principles and will itself be a material consideration where heritage is involved.

This *Temporary Structures* guidance was the product and object of years of CLA lobbying, not least because its draft versions were negative, reinforcing the view that temporary structures were "inappropriate". The final version however is definitely helpful to those seeking planning permissions because it takes a much more balanced approach.

It stresses the **benefits** of temporary structures: the opening sentence on page 1 says that "Events in historic places make a vital contribution to the economic sustainability of our heritage". Sections 1.2, 2.1-2.2, 4.1-4.2, and 6.12 reinforce this.

Even more importantly, it says in 6.7 that "**there should not be a presumption against temporary structures simply because they are visible in the historic environment**", a crucial statement because it reverses the assumption normally made in LPAs.

It also stresses **proportionality** throughout: 6.4 says that "each case will need to be considered on its merits, and a proportionate response taken, according to the circumstances", and 8.2 adds that "the amount of information required should be proportionate…this is of particular relevance to temporary structures as the cost of preparing the application…may be high in relation to the income derived…".

It is essential to quote this document when seeking planning permissions, because LPAs and Historic England regional offices may not be aware of it or choose to ignore it.

E. SUMMARY

1. Large temporary structures in place for months rather than weeks are likely to constitute 'development' and therefore to require **planning permission**. Smaller structures in place for shorter periods may well not be 'development', in which case they would not need planning permission. Where the tipping point at which planning permission is required comes is not clear: it is a matter of fact and degree in each case, and depends primarily on size, 'permanence', and the degree of physical attachment to the ground (see Section C above).

2. Even if a structure did not amount to 'development', 'development' needing planning permission also happens if there is a '**material change of use**' (see Section C (b) above).

3. Where structures are in place for **less than 28 days a year** in total, planning permission may be deemed to have been granted by the **GPDO**, though this does not apply 'within the curtilage of a building' (see Section C (c) (i) above). Where the building is a **restaurant, café, or pub**, or a '**historic visitor attraction**' open to the public, the CLA and others have secured specific new permitted development rights from 2 January 2022 for 50m^2 moveable structures (see section C (c) (iii) and (iv) above).

4. The planning position can be complex, and there are grey areas in which the need for permission is debateable. In these cases, you may be able to increase certainty by obtaining a **CLOPUD** or **CLEUD** (see C (d) above). Note that the **LPA**, if asked, is very likely to say that consent is required (see C (d) above).

5. You should also consider whether to seek a **permanent** rather than **temporary** consent.

6. For **listed buildings** and/or **scheduled monuments** (see Section D above), **LBC** or **SMC** will only be required where there is work physically affecting the building or monument itself. But where **planning permission** is needed, as above, its effect upon a listed building or any monument, or its **setting**, will be a '**material consideration**'.

7. Perhaps partly because of the lack of national planning guidance in this area, a strong culture of opposition to temporary structures grew up in most LPAs and is carried into appeal decisions. There is usually a view, not set out in formal policy, that they must result in "unacceptable visual intrusion", especially where heritage or Green Belt are involved, and also that temporary planning permissions will "inevitably" become permanent.

8. The counterarguments are that temporary structures can have major economic benefits, especially for heritage, and that temporary permissions are temporary, ceasing to be valid when they expire, and there is no obligation on the LPA to grant a further consent at that point. They can be used to test whether the benefits claimed by the applicant are realised in practice; and if the development does cause harm, that would be grounds not to grant another consent. But these arguments, where they are put forward, are not always taken into account, and LPAs appear to ignore the many benefits of temporary structures, including their ability to generate tourism revenue and fund the maintenance of heritage.

9. Where planning permission is required, therefore, the chances of obtaining it are lower than you might expect, even in cases where there is no adverse impact on traffic, heritage, or local inhabitants, and no objections.

10. However, in cases which involve **heritage**, broadly defined, the 2010 **Historic England advice *Temporary Structures in Historic Places*** (see section D (d) above) has proved helpful in reversing traditional assumptions that temporary structures are "inappropriate" and dangerous, but it is essential to quote this guidance if you want the LPA to take it into account. This should be done in a planning/heritage analysis.

F. CONCLUSION AND POTENTIAL STRATEGY

1. Members can first consider whether they can limit themselves to proposals which do not need a **planning application**, either because they are not **'development'**, or because they are **permitted development** deemed already to have permission under the **GPDO**. If you want certainty that planning permission is not required, obtaining a CLOPUD would provide this. In the case of a prior approval application under **GPDO Class BB**, follow the advice set out in Section C (c) (iv) above.

2. In addition, where possible, it is a good idea to avoid the need for **LBC** or **SMC** by avoiding any physical changes which would need these consents.

3. If the aim of the temporary structure is to generate significant income, in most cases you probably will need to make a planning application. If you were to go ahead without planning permission (as some owners do, because income generation is crucial to the survival of heritage, whether or not planning permission can be obtained), you would be vulnerable to **enforcement** action, potentially a major problem if you book events in advance, and also thus effectively beholden to any neighbour(s) whose complaints about noise or traffic might prompt the LPA to take enforcement action (almost every property will have someone nearby who will complain about something, reasonably or not, and LPAs, however under-resourced, tend to follow up such complaints). See the CLA heritage Guidance Note *Heritage enforcement and prosecution*.

4. If you do apply for **planning permission**, do not assume that this will be easy to obtain. You need to weigh up the costs of preparing proposals against the likely benefits and the risks of refusal. It is a good idea to follow the CLA Guidance Note *Getting heritage [etc] consents*, and essential to include a **planning/heritage analysis**, which should explain why the proposals are desirable, why they are not harmful (or what measures will be taken to avoid or mitigate any problems), and why the specific location has been chosen, and refer to the NPPF and especially the **Historic England advice** (you need to quote the key parts of this in detail, as above, or the LPA will ignore it). In simple cases this analysis may be brief, but in many cases, it will need to be detailed, and you may need help from an experienced planning (or where relevant heritage planning) consultant.

5. You should also consider whether to seek a **permanent** or a **temporary** consent (see section C (e) above).

6. **Important note: this area of planning law is complex, this guidance is simplified in some areas, and it obviously takes no account of the circumstances of individual cases. Site-specific expert advice should be sought.**

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