

Proactive Planning Enforcement and Temporary Structures

1. Introduction

- 1.1 Covid-19 has presented a wide range of challenges to the safe and ongoing operation of many business and organisations. One issue that has become clear is the need, in some instances, for more physical space to accommodate social distancing and safer operations. Temporary structures/buildings (for example portable cabins, portable buildings, and portable welfare blocks) may provide a solution to this issue on a temporary basis. We have received a number of queries about the installation of temporary structures/buildings since the onset of Covid-19.
- 1.2 In most instances temporary structures/buildings require planning permission, in some instances for any time period and in some instances if they are to be in place for longer than 28 days of a year. Recent amendments to the Permitted Development Rights have been published to allow moveable structures within the curtilage of certain premises without needing to seek planning permission (see Appendix 2) until 1st January 2022.
- 1.3 Given the current and ongoing COVID-19 situation, Cheltenham Borough Council is seeking to allow temporary structures/buildings without planning permission in certain circumstances, until 1st January 2022 in line with the amendment to the Permitted Development Rights, to ensure the successful running of existing businesses and organisations in the town, whilst adhering to the government's COVID-19 guidance. This does not apply to residential properties.
- 1.4 What follows, is guidance to existing businesses and organisations who wish to create more space for operational reasons arising directly from Covid-19 by utilising temporary structures/buildings. Below we have set out the information we need to assess the planning requirements for all temporary structures/buildings being considered on Privately Owned Land and/or Council-owned parks and gardens. We have provided information and links to guidance to ensure risk assessments are in place, Environmental Health standards are maintained and Covid-19 measures are adhered to Appendix 1). These matters remain the responsibility of the relevant business and/or organisation and nothing in this documentation overrides that responsibility.
- 1.5 The temporary use of the public realm/the highway is covered by different guidance. The highway is defined as:

“All roads, bridges, carriageways, cartways, horseways, bridleways, footways, causeways, churchways, and pavements over which there exists a public right of passage, that is to say a right for all Her Majesty's subjects at all seasons of the year freely and at their will to pass and repass without let or hindrance.”

Guidance on the use of the public realm/highway can be found at https://www.cheltenham.gov.uk/info/11/licensing_and_permits/1608/covid-

[19 recovery for licensed premises](#). Please follow the guidance on “Using the Public Realm to Trade Safely during the COVID-19 Pandemic” for any operations within the public realm/highway.

1.6 Appended to this document you will find:

- information and links to guidance to ensure risk assessments are in place, Environmental Health standards are maintained and Covid-19 measures are adhered to,
- A technical note explaining the planning rationale for this initiative, and
- Examples of the need for temporary structures.

1.7 **IMPORTANT NOTE - This guidance covers planning controls only.**

- **Temporary structures/buildings may require building consent. It is possible that your proposal is exempt from building control regulations for a period of 28 days from the point it is erected. Before doing anything, we suggest having a discussion with one of our building control officers by contacting buildingcontrol@cheltenham.gov.uk or call 01242 264321. Where building consent is required but not sought, we retain the right to take appropriate action.**
- **Temporary structures/buildings may require a licence (for the sale of alcohol, the preparation of food etc). For further information please visit https://www.cheltenham.gov.uk/info/11/licensing_and_permits.**

2. General Requirements

2.1 Any existing business or organisation wishing to erect (or which has already erected) a temporary structure/building for Covid-19 related reasons on private land or on Cheltenham Borough Council owned parks and gardens will need to email planning@cheltenham.gov.uk with the following information:

- Business name, contact details of a named individual,
- A site location plan,
- A location plan including the location of the structure,
- A description of the structure,
- When the structure was erected or when do you plan to erect it,
- Photos of the site including the area where the temporary structure will be located, and,
- A brief overview of what the structure will be used for (including the hours it will be used for) and why the structure is required (related to Covid-19).

2.2 Council Planning Officers will make an assessment of this information to determine whether the proposal is acceptable (subject to the relevant section below). We will seek to make this determination in a timely manner and usually not more than 10 days. We may impose controls

on the way in which temporary structures are used (for example limit them to day time use to reduce noise to neighbours). **We will approach this assessment in a positive and proactive manner, although a positive outcome is not necessarily guaranteed. In a timely manner and usually not more than 10 days.**

2.3 There is no charge for this initial request. If a Building Consent, Licence or Council Lease is required, there may be a fee.

2.4 Where controls have been imposed at the assessment stage, but these are not being implemented, the Council may instruct removal or changes to operations.

3. Specific Requirements for Private Land

3.1 There are no additional requirements on private land beyond those outlined in section 2.

4. Specific Requirements for Council owned Parks and Gardens

4.1 If your business or organisation has an existing lease with Cheltenham Borough Council to occupy a specific piece of land in one or more of our parks and gardens, and you wish to erect a temporary structure (or structures) within that specified area, there are no additional requirements above those for private land beyond those outlined in section 3.

4.2 If your business or organisation has an existing lease with Cheltenham Borough Council to occupy a specific piece of land in one or more of our parks and gardens, and you wish to erect a temporary structure (or structures) outside of that specific area (but still within the park or garden) you will need to enter into an agreement with the council as land owner. Any charges will be kept to a minimum.

4.3 Businesses or organisations who do not currently occupy space in one of our parks and/or gardens will not be able to participate in this initiative at this stage.

5. What happens after 1st January 2022?

5.1 The guidance above will allow for the erection of temporary structures for Covid-19 reasons until 1st January 2022 without the need for planning permission in certain circumstances, following assessment. After that date, the Council will review its position and the Covid-19 situation. We will communicate with you at this stage. Possible outcomes include:

- you are instructed to remove the structure you have erected,
- you are asked to apply for planning permission, or
- this initiative continues for an extended but finite period of time.

Appendix 1 – Environment Health, Risk Assessment and Covid -19 Guidance

There is a wealth of guidance available to businesses and organisations for safe operations during the COVID-19 pandemic. Our website (<https://www.cheltenham.gov.uk/coronavirus>) contains links to some of this information. Guidance is changing at pace, and it is business and organisational operators' responsibility to keep up to speed with and implement the relevant guidance. Below is a summary of some of that guidance and other matters to consider, but this is not intended as an exhaustive or complete list.

1. **Noise and other nuisance:** The council must balance the use of the temporary space to trade safely during the COVID-19 pandemic with the needs of others, particularly residents. The council will consider **every case on its merits** to determine an appropriate start and terminal licensing hour. As a *general* guide however, businesses can consider their operating options between 08:00 and 22:30 bearing in mind the terminal hour will be subject to change on a case-to-case basis. Premises should avoid playing amplified music in temporary structures, as they offer little or no acoustic insulation.
2. **Sale of alcohol:** If the sale of alcohol forms part of your business, you must make sure any additional public realm space is adequately licensed for the sale of alcohol. Please refer to the licensing FAQs for advice and more information.
[\[https://www.cheltenham.gov.uk/info/11/licensing_and_permits\]](https://www.cheltenham.gov.uk/info/11/licensing_and_permits)
3. **Pavement licences** – If you want to place tables and chairs on the highway for the purpose of serving food, you will need a pavement licence. You can find more information on our website at https://www.cheltenham.gov.uk/info/41/licences_-_streets/107/objects_on_the_highway/2
4. **Risk assessments:** The responsibility to carry out a COVID-19 risk assessment in line with the [HSE guidance](#) remains with individual businesses to ensure they can trade safely and comply with the Government's safe working and social distancing guidelines. A new structure creates new risks from both its form and function and these must be addressed. If the structure is large or specially designed it may be a Temporary Demountable Structure (TDS) see <https://www.hse.gov.uk/event-safety/temporary-demountable-structures.htm>.
5. **Regulation and enforcement:** Through this guidance and more generally via the council's recovery strategy, we have a clear aim to support businesses with their recovery and safe trading practices. There is also a role for businesses to play. Businesses must operate in a responsible manner, being sensitive to their environments and making sure they comply with their duties; for example, any licence conditions and other legal duties.

As a statutory regulator, the council will be under a duty to investigate and respond to complaints and non-compliance issues. Enforcement will be undertaken in accordance with the principles set out in the [Corporate Enforcement Policy](#) available on the website.
6. **Fire Safety:** All premises will have carried out a fire risk assessment which will need to be reviewed and amended as appropriate: <https://www.gov.uk/workplace-fire-safety-your-responsibilities/fire-risk-assessments>

7. **Environmental Impact:** Gas-fired patio heaters have a huge environmental effect and should not be used. It is recommended blankets are used instead.

Appendix 2 – Technical Planning Note

Part 4 (Temporary Buildings and Uses), Class B (temporary use of land) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) reads:

Permitted development:

B. The use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes of—

- (a) the holding of a market;
- (b) motor car and motorcycle racing including trials of speed, and practising for these activities,

and the provision on the land of any moveable structure for the purposes of the permitted use.

Development not permitted:

B.1 Development is not permitted by Class B if—

- (b) the land in question is a building or is within the curtilage of a building;
- (c) the use of the land is for a caravan site;
- (d) the land is, or is within, a site of special scientific interest and the use of the land is for—
 - (i) motor car and motorcycle racing including trials of speed or other motor sports, and practising for these activities;
 - (ii) clay pigeon shooting; or
 - (iii) any war game, or
- (e) the use of the land is for the display of an advertisement.

The Town and Country Planning (General Permitted Development) (England) (Amendment) (Coronavirus) Order 2021 inserts Class BB (moveable structures for specified uses);

Permitted Development:

BB. Until the end of 1st January 2022, the provision of any moveable structure within the curtilage, and for the purposes, of—

- (a) a building used for a purpose within—
 - (i) article 3(6)(p) or (q) (drinking establishments etc.) of the Use Classes Order; or
 - (ii) Class E(b) (sale of food and drink etc.) of Schedule 2 to that Order(a); or
- (b) a historic visitor attraction

Development not permitted:

BB.1. Development is not permitted by Class BB—

- (a) within the curtilage of a scheduled monument; or
- (b) if the use of the moveable structure is for the display of an advertisement.

Interpretation of Class BB:

BB.2. For the purposes of Class BB, “historic visitor attraction” means 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.”

Any building (temporary or otherwise) that does not meet the requirements above generally requires planning permission. Failure to seek planning permission(s) can result in enforcement action.

All Local Planning Authorities are required to investigate alleged breaches of planning controls with a view to deciding whether or not to take enforcement action to remedy the situation. The decision as to whether to enforce following an investigation is discretionary and is dependent on a number of factors including whether it is expedient to do so having regard to the development plan and any other material considerations.

We understand that businesses and organisations are experiencing difficult choices and decisions at present. For some who need more space but do not have the time to apply for and wait until planning permission is granted for a temporary structure may face a difficult choice – either proceed and install a temporary structure and risk council enforcement action OR don't proceed and risk a negative business impact.

In recognition of this challenge and in order to exercise our statutory duty to investigate breaches of planning controls effectively, this guidance document seeks to 'front load' our enforcement investigation obligations. Businesses and organisations are being asked to report breaches to planning controls that they intend to implement or already have implemented. The Council will then investigate these breaches and determine an appropriate course of action.

The council will approach this initiative in a positive and proactive manner. That said, the Council remains willing to enforce a breach where it is expedient and in the public interest to do so. The Council maintains absolute discretion over whether to relax enforcement for a set period of time in lieu of planning permission being sought, and this is subject to the structure being safe, suitable and appropriate etc.

The implementation of this initiative in no way ensures or implies that planning permission will be given to structures introduced through this initiative. These are exceptional times and the council's decision as to whether to enforce alleged planning breaches will be based on exceptional circumstances. In many instances it is likely that any temporary structures erected as a direct result of Covid-19 through this initiative will not receive planning approval in the long run and will need to be removed at the owner's cost. It is important that anyone considering the installation of temporary structures is aware of these risks.

Appendix 3 – Examples

Examples 1-4 would not fall within the new Permitted Development Rights for movable structures.

Example 5 would fall within the new Permitted Development Rights for movable structures.

Example 1 – Primary School A

Primary School A, an academy, is striving to open to all the children of Key Workers, and Reception, Year 1 and Year 6 pupils. They do not have sufficient space to accommodate all staff in the existing staff room whilst ensuring social distancing. The school want to locate a temporary building (a porta-cabin type unit) on the school field, close to the school, to provide additional staff facilities and ensure Covid-19 compliance. In principle, this would be supported.

Example 2 – Light Industrial Business B

Light Industrial Business B needs more office space to accommodate staff and ensure social distancing. Home working is not possible. They want to locate a temporary building on hardstanding alongside the industrial unit to accommodate staff. The temporary structure is located away from residential properties, does not compromise the car parking or operation of the site. In principle, this would be supported.

Example 3 – Manufacturing Business C

Manufacturing Business C is unable to accommodate social distancing on its production line. The business can expand the production line into its existing store, but requires temporary space to use as a store. The business wants to locate a temporary structure on a grassed area within its ownership next to its main building. The store does not contain any noisy plant or equipment and only requires accessing now and again. In principle, this would be supported.

Example 4 – Café in the Park Business D

Café in the Park Business D wants to create a covered, open sided area to allow customers to queue for takeaways within an area of a park they currently lease from the council. This will be temporary. The covered area allows customers to queue in comfort in adverse weather, whilst observing social distancing. The hours of operation are not changing. In principle, this would be supported.

Example 5 – Bar/Restaurant Business E

Bar/Restaurant Business E wants to be able to seat/serve customers outdoors and has outdoor space in the form of a garden/parking area which is within its ownership. The business wants to ensure this area is usable in all weathers whilst complying with COVID-19 restrictions, and therefore wants to erect marquee structures over the outdoor seating area. The marquees are movable structures to be located within the curtilage of the business and therefore in principle, this would be supported.