

## **PLANNING COMMITTEE**

**3 NOVEMBER 2020**

### **PROACTIVE PLANNING ENFORCEMENT AND TEMPORARY STRUCTURES**

#### **1.0 Purpose of Report**

1.1 To seek approval from Members for the adoption of a policy for under enforcement of temporary structures requested as a result of the Covid-19 pandemic.

#### **2.0 Background Information**

2.1 The Covid-19 pandemic has resulted in significant impacts for the whole of the country, not least businesses. One challenge for many businesses is providing a safe environment for operation enabling compliance with social distancing rules. A number of authorities have introduced a temporary relaxation for planning enforcement where structures are provided within a business premise to assist with complying with these rules and enable the business to continue operating or to operate more successfully.

2.2 A number of enquiries have been received from different companies asking if temporary structures including portacabins and gazebos can be erected without the need for planning permission. As is detailed within Appendix 2 of the guidance leaflet, the majority of these structures would require planning permission due to the length of time that they would be in place (more than 28 days).

2.3 In order to guide such enquirers, a guidance leaflet (attached to the end of this report) has been prepared to assist businesses who might wish to take the opportunity of providing additional space for either its customers or staff. It is hoped the principle of under enforcement of planning regulations for a time restricted period enable a number of businesses to continue trading whilst also giving some comfort should they provide additional [enclosed] space. This guidance, is suggested, would only give a temporary period of relaxation from planning enforcement for businesses – it is suggested until the end of March 2021 – when the approach would be reviewed in light of the pandemic.

2.3 It is hoped that a number of businesses will be able to take the opportunity of providing such structures as we are heading into winter and also Christmas. However, it is also of paramount importance to ensure that such developments are not significantly harmful to either the environment in which they are situated or to adjoining neighbours. Additionally, it is important that if agreement is sought and there are significant concerns that the Council has the opportunity to intervene.

2.4 It is also necessary to ensure that anyone wishing to take opportunity of this temporary relaxation is aware that other controls, such as building regulations or licensing approval for example, have not been waived.

#### **3.0 Proposal**

3.1 In order for a business to benefit from these temporary changes, they would be required to submit details of their proposal to the Council for consideration. This would ideally be

prior to undertaking the works. As detailed in the attachment, information required would comprise:

- 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).

This would be assessed by an Officer as to whether or not it is acceptable and any decision made. In view of this being an informal temporary measure to under enforce, there would not be any right of appeal against the decision.

3.2 An assessment after 31<sup>st</sup> March 2021 would be taken in relation to any complaints that might have been received as well as to the 'state' of the Covid-19 pandemic. It is likely if no complaints have been received and the social distancing measures are still required, that a further extension in time would be permitted. However, this would be limited to ensure the development did not become immune from enforcement action.

3.3 It should be noted that any shelter which is 'substantially enclosed' (more than 50% of the sides are enclosed) will be required to be smokefree in accordance with the Health Act 2006 and the Smoke-free (Premises and Enforcement) Regulations 2006.

3.4 Businesses considering erecting some form of structure will also be advised to consider whether noise from people using the structure could cause problems to people in neighbouring properties?

#### **4.0 Financial Implications**

4.1 This process would have no direct financial implications upon the Council outside of the time for Officers to record, assess and provide a decision on the request.

#### **5.0 Equalities Implications**

5.1 The Council's approach to under enforcement of temporary buildings is not considered would have impact in terms of equality. Having a defined approach will ensure there is equal opportunity and that no individuals or groups are disadvantaged or discriminated against because of race, sex, disability, religion or belief, sexual orientation, gender reassignment, maternity and pregnancy, marriage or civil partnership, age, or social inequality.

#### **RECOMMENDATIONS that:**

- (a) Members agree the approach to under enforcing breaches of the planning regulations for temporary structures for businesses for a temporary period up until the 31<sup>st</sup> March 2021.**
- (b) After 31<sup>st</sup> March 2021 Officers will review the requests received or any temporary structure erected without a request to determine whether it is appropriate to allow the structure to remain for a longer period of time.**

### **Reason for Recommendations**

**To enable businesses to continue to operate more effectively during the Covid-19 pandemic for the benefit of the economy.**

### **Background Papers**

None

For further information please contact Lisa Hughes – Business Manager Planning Development on Ext 5565.

Matt Lamb  
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# PROACTIVE PLANNING ENFORCEMENT AND TEMPORARY STRUCTURES

## Introduction

Covid-19 has presented a wide range of challenges to the safe and ongoing operation of many business and organisations and with this has some concern regarding the compliance with social distancing advice. One issue that has become clear is the need, in some instances, for more physical space to accommodate social distancing and safer operations to enable businesses to operate as effectively as they can. Temporary structures/buildings (for example portacabins, portable buildings, 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 and this guidance is therefore seeking to offer clarification on Newark and Sherwood District Council's approach to these matters.

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. Given the current COVID-19 situation, Newark and Sherwood District Council is seeking to allow temporary structures/buildings without planning permission in certain circumstances, for approximately five months initially (until the 31 March 2021), to ensure the successful running of existing businesses and organisations in the district, whilst adhering to the government's COVID-19 guidance. This does not apply to residential properties.

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. 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 (see Appendix 1). These matters remain the responsibility of the relevant business and/or organisation and nothing in this documentation overrides that responsibility.

The temporary use of the highway is not covered by this document as that is maintained and managed by Nottinghamshire County Council, and therefore we would suggest that in such instances communication is had with the County Council in the first instance. 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."*

This guidance covers planning controls only. Temporary structures/buildings may require building regulation consent. We will make you aware of the need (or otherwise) for building regulation consent when you make enquiries to us. Before doing anything, we suggest having a discussion with one of our officers as follows:

For temporary structures on private land please contact [planning@newark-sherwooddc.gov.uk](mailto:planning@newark-sherwooddc.gov.uk) or call **01636 650000**.

If your proposal is within the setting of a listed building, we will aim to take a sympathetic approach to such developments. However, should your building be listed, please contact the Council's Conservation Team prior to submitting the above information for advice. They may be contacted via [conservation@newark-sherwooddc.gov.uk](mailto:conservation@newark-sherwooddc.gov.uk).

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,
- Examples of the need for temporary structures, and
- A technical note explaining the planning rationale for this initiative.

### General Requirements

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 will need to email [planning@newark-sherwooddc.gov.uk](mailto:planning@newark-sherwooddc.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).

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 within ten working days. If we are unable to meet this timescale we will endeavour to communicate with you to provide you with a revised suitable timescale.

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.**

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

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

### What happens after 31<sup>st</sup> March 2021?

The guidance above will allow for the erection of temporary structures for Covid-19 reasons for five months (initially) without the need for planning permission in certain circumstances and following assessment. After the 31<sup>st</sup> March 2021, 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.newark-sherwooddc.gov.uk/coronavirus/latestupdatefromthecouncil/>) 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. Inside the area where you place your objects (i.e. tables and chairs), you will be required to maintain 1m social distancing (2m though remains preferable), where possible. <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/5-stepsto-working-safely> states that where the 1m cannot be maintained between people (from different households), you should do everything practical to manage the transmission risk by:

- considering whether an activity needs to continue for the business to operate,
- keeping the activity time involved as short as possible,
- using screens or barriers to separate people from each other,
- using back-to-back or side-to-side working whenever possible,
- staggering arrival and departure times,
- reducing the number of people each person has contact with by using 'fixed teams or partnering'.

Whilst these apply to a workplace, the principles could be applied to the use of temporary buildings and structures to trade safely during the COVID-19 pandemic.

2. You also need to consider how other more general social distancing measures can be supported, such as queuing outside your business. Consideration points for the management of social distancing in the public realm when queuing to enter businesses include:
  - Other queues to other business,
  - Other general queues for cash machines, places where people are waiting for others, bus stops etc.,
  - Available space footpaths and roads,
  - Ability to clearly signpost (Cheltenham businesses can contact the Cheltenham BID for sourcing social distancing stickers),
  - Traffic control and risks to and from cars, cycles and other pedestrians walking by,
  - How roads and pavements might be divided up , – Which street and business premises may have the issues,

- Limiting the number of people queuing, particularly where your business adjoins others where people will be queuing too.

This assessment will form part of your overall COVID-19 risk assessment. Further guidance on <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/shops-andbranches> can be read online.

## Other considerations

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 0800h and 2200h 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.
3. **Risk assessments:** The responsibility to carry out a COVID-19 risk assessment in line with the HSE guidance (<https://www.hse.gov.uk/simple-healthsafety/risk/index.htm>) 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/eventsafety/temporary-demountable-structures.htm>
4. **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 Council Planning Enforcement Policy (<https://www.newark-sherwooddc.gov.uk/media/newarkandsherwood/imagesandfiles/planningpolicy/pdfs/REPORTTOEDC-PEP.pdf>) available on the website.

5. **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-firesafety-your-responsibilities/fire-risk-assessments>



6. **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—

- (a) it would consist of development of a kind described in Class E of this Part (temporary use of land for film-making);
- (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.”

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.

Planning enforcement action would be unlikely to be taken against developments that are put up without planning permission, unless there are serious environmental or amenity concerns arising from them such as:

- Repeated noise nuisance at unsociable hours, for example from a temporary external cover or marquee
- Road Safety hazards from insufficient parking if displaced for use by customers
- Environmental harm, for example to trees, hedges or wildlife
- Damage to Listed Buildings
- Obstruction of rights of way
- Production of litter or other debris

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**

### Example 1 – 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 2 – 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 with 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 3 – 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. In principle, this would be supported.