



## **TORBAY DEVELOPMENT MANAGEMENT SERVICES:**

**Temporary Structures & Relaxation of Planning  
Conditions in response to COVID-19**

**Fast Track Consideration Mechanism**

**August 2020**

**Torbay Council Development Management Services: Temporary Structures and Relaxation of Planning Conditions in response to COVID-19.  
Fast track Consideration Mechanism.**

- 1.1 Torbay Council recognises the threat to the hospitality and service industry caused by COVID-19. This is particularly pressing given Torbay's role as a major tourist resort. In addition a large number of organisations such as employers and schools need to put measures in place to operate safely.
- 1.2 The need to re-open business, schools, charities etc. whilst allow for social distancing, temporary one way systems, sanitiser points etc. is likely to create a demand for temporary structures, porta cabins, marquees, queuing/waiting areas etc. Whilst these usually **require planning permission (particularly if erected for longer than 28 days in a year), Torbay Council is introducing temporary changes to its planning enforcement policy, initially until 31 October 2021**, to assist businesses, schools and charities etc. to operate with effective social distancing, and adhering to other Government restrictions. This applies to business premises, hotels, educational establishments, clinics, specialist accommodation such as care homes and charities but does not apply to residential dwellings (although the later may enjoy permitted development rights already).
- 1.3 Until 31 October 2021 any existing business or organisation in Torbay which
- i. erects (or which has already erected) a temporary structure on private land or on open space/ car parks; or
  - ii. requires the temporary relaxation of a planning condition for Covid-19 related reasons will not be subject to planning enforcement action if it follows the procedures and obtains the consents set out below.
- 1.4 It is noted that many of the measures in this document may be formalised, or similar measure put in place in the forthcoming Business and Planning Bill 2020. We will review the temporary informal consents in the light of this legislation and make amendments where necessary.
- 1.4 This temporary policy amendment applies to private and Council-owned land but does not remove the need to obtain landowners' permission (including from the TDA where the Council is the landowner) to use the land/carry out works.

**Temporary Structure Temporary Consent Requirements**

- 1.5 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 open space/ car parks should email [Planning@Torbay.gov.uk](mailto:Planning@Torbay.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. This may be a brochure but should include dimensions, material and any writing or symbols on the structure.
  - A description of how you plan to make the structure safe e.g. wind loading, flame retardancy, anchorage / stability etc,
  - When the structure was erected or when do you plan to erect it,
  - Photos of the site including the area where the temporary structure is/ will be located, and,
  - A brief overview of what the structure will be used for and why needed for in relation to COVID-19 recovery.
- 1.6 This approach should also be used temporary relief is sought from planning conditions for example in relation to construction or opening hours, delivery times, restrictions on the

nature of goods sold, and advertising in relation to COVID-19. Where a change of use or relief goes beyond what is reasonably necessary to adjust to the current exceptional circumstances, a full planning application will be required.

- 1.7 Council Planning Officers will assess this information to determine whether the proposal is acceptable (subject to the views of the relevant services below) **We will seek to make this determination within 10 working 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 disturbance to neighbours). We will seek to be positive in approving structures, but will need to assess them on a case by case basis, so cannot guarantee to approve them. There is no charge for this initial request. If a Building Consent, Licence or Council Lease is required, there may be a fee. Where a proposal raises complicated planning issues and a full planning application is required, then a normal application fee will be required.
- 1.8 Environmental Health, Licencing, Building Regulations and Highways guidelines must be adhered to, and guidelines for these can be found at:
  - **Environmental Health:** [www.torbay.gov.uk/business](http://www.torbay.gov.uk/business)
  - **Street Licencing and trading:** [www.torbay.gov.uk/street-and-trading](http://www.torbay.gov.uk/street-and-trading)
  - **Building Control** [www.torbay.gov.uk/building-control](http://www.torbay.gov.uk/building-control)
- 1.9 Where controls have been imposed at the assessment stage, but these are not being followed, the Council may instruct removal of the temporary structure or changes to operations.
- 1.10 Permission will be required from the landowner to erect temporary structures. Where the proposal is on land owned by Torbay Council, it will seek to consider requests favourably. Please notify us if the land is Council-owned so we can confirm that there is no objection from the TDA.

### **What happens after 31 October 2021?**

- 1.11 This guidance allows the erection of temporary structures for COVID-19 recovery reasons in certain circumstances, for a temporary period, and following assessment without risking planning enforcement action. However unless the scheme has been extended, or superseded by other legislation or guidance (such as the Business and Planning Bill), this will cease on 31 October 2021.
- 1.12 On or as soon as reasonably possible after 1<sup>st</sup> November 2021 any temporary structure should be removed, unless an application for planning permission has been approved by the Local Planning Authority.

### **Safety Advice**

- 1.13 Businesses and other organisations should keep up to date with and follow Government guidelines on safe working, social distancing and other measures. Detailed advice is available online at:
  - <https://www.gov.uk/coronavirus>
  - <https://www.gov.uk/coronavirus-business-reopening/y/hospitality>

## **2. Other considerations for the Council and Businesses**

- 2.1. **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 in temporary structures (??) as between 08:00 and 22:30 bearing in mind

the terminal hour will be subject to change on a case-to-case basis. Operators should avoid playing amplified music in temporary structures, as they offer little or no acoustic insulation.

- 2.2. **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 link above for advice and more information.
- 2.3. **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> .
- 2.4. **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 Corporate Enforcement Policy (as amended by this guidance) available on the website.

- 2.5. **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-fire-safety-your-responsibilities/fire-risk-assessments>
- 2.6. **Environmental Impact:** Gas-fired patio heaters have a huge environmental effect and their use is discouraged. Provision must be made for the collection and reuse, recycling or sustainable disposal of cups, containers etc. and the use of single use plastics kept to a minimum.
- 2.7 **Highways and Access:** We will need to consider whether proposals cause danger or interference with road users. The Council has increased the flexibility for pavement licences [www.torbay.gov.uk/street-and-trading](http://www.torbay.gov.uk/street-and-trading). However regard needs to be had to the location of structures to maintain visibility and allow movement of people etc.

## **Technical Planning Note and Disclaimer**

- 3.1 Certain temporary uses of land are “permitted development” under 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). This allows use of land for 28 days, although other uses such as markets, motorsports are limited to 14 days; and some areas are further restricted.
- 3.2 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. The Council does not have the power to waive the need for planning permission; but it does need to consider whether breaches of planning control warrant enforcement action to remedy the breach. 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.
- 3.3 This guidance seeks to assess whether temporary structures would justify enforcement action taking into account material planning considerations, including the need to support economic and social recovery. The Council will approach this initiative in a positive and proactive manner.
- 3.4 However the Council reserves the right to enforce a breach of planning control 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.
- 3.5 The implementation of this initiative does not indicate that permanent planning permission will be given to particular forms of development. In many instances it is likely that any temporary structures erected in these exceptional times through this initiative will not receive permanent planning approval 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.

### **Acknowledgement**

- 3.6 Torbay Council gratefully acknowledges advice issued by Cheltenham Borough Council which has been referenced in drawing up this advice note.