

Temporary buildings and structures guidance:

- 1.1 In most circumstances, new buildings and structures on private and public sector land need planning permission if they are in place for a period of more than 28 days¹. Covid-19 has presented a wide range of challenges to the safe and ongoing operation of many business and organisations in Derby. As businesses and organisations begin to re-open it is becoming clear that in some instances, there may be a need for more physical space to accommodate social distancing and safe operations.
- 1.2 For some food and drink / hospitality businesses, the placing of tables and chairs on the highway (including the footway) adjacent to their premises may be one solution to providing additional space and allowing safe operation. The 'pavement licenses' which will regulate the proliferation of tables and chairs within the highway. The fast track procedure will bypass the existing regulatory regimes.

Further information relating to pavement licenses can be found here:

<https://www.derbylive.co.uk/hire-our-spaces/outdoor-spaces/street-cafes/>
- 1.3 Whilst some businesses may benefit from additional space within the highway, businesses may also benefit from the erection of other temporary structures and buildings on a temporary basis.
- 1.4 In the context of the current COVID-19 pandemic, Derby City Council will, in certain circumstances, allow temporary structures and buildings to be placed on land without planning permission for a period up to 23rd March 2022 (inclusive). This is to ensure the successful running of existing businesses and organisations in the city, whilst adhering to the governments COVID-19 guidance, including social distancing measures. This is a proactive approach to the enforcement of planning controls and is consistent with Government objectives.
- 1.5 Importantly, this initiative does not constitute the granting of planning permission and does not apply to residential properties.
- 1.6 To take advantage of this initiative, businesses and organisations will need to make a request to the Council, and officers will undertake a brief assessment of the request in consultation with other teams within the Council and where appropriate external stakeholders such as the two Business Improvement Districts (BIDs) in the City Centre. Information to include in a request is set out in Section 2 of this guidance note.
- 1.7 This guidance document provides you with all the information you need, including a list of the information you need to provide to us to enable an assessment of your idea for a temporary structure / building.

¹ See Appendix B – Technical Planning Note.



- 1.8 This guidance covers planning controls only. Temporary structures / buildings may also require building regulations approvals, consent of the landowner / freeholder as well as compliance with food safety, health and safety and licensing legislation where necessary. Proposals associated with listed buildings may also require listed building consent before a proposal is implemented.
- 1.9 Before doing anything, we suggest having a discussion with one of our officers as follows:
- For temporary buildings and structures (not including measures covered by pavement licenses) contact:
developmentcontrol@derby.gov.uk
 - For guidance on use of the highway / public realm (not including measures covered by pavement licenses) contact:
maintenance.highways@derby.gov.uk
 - For guidance on licensing contact:
licensing@derby.gov.uk
 - For guidance on the use of land or buildings (not highway) owned by the Council contact:
estates.cor@derby.gov.uk
- 1.10 A list of other Council contacts and useful guidance is included in Appendix C.

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 should email developmentcontrol@derby.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, including sizes and dimensions
 - 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 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)
 - Written confirmation that the building or structure will be removed by the end date, unless planning permission has been obtained
- 2.2 Where a proposal would have a physical direct impact on a listed building, listed building consent will be required before any works are undertaken. Where a proposal is located within the curtilage of a listed building, more detailed information may be required particularly in relation to issues such as anchorage, in order to ensure that the fabric of the listed building is not affected. It is a criminal offence to cause damage to listed buildings. You can view the location of Derby's listed buildings and other heritage assets using the Council's mapping portal, maps.derby.gov.uk.
- 2.3 Council Officers will make an assessment of the information submitted to determine whether it is appropriate for the proposal to take advantage of this initiative, having regard to a number of considerations such as impacts on amenity, flood risk, highways, accessibility and heritage, as detailed in Appendix A. Officers will aim to work proactively with businesses and where necessary may suggest amendments to a proposal to overcome / mitigate concerns. For example, limiting the hours that the building or structure is used to safeguard residential amenity. Where significant concerns cannot be overcome through informal negotiation, it may be necessary for the proposal to be considered through the formal planning application route.
- 2.4 Where controls have been imposed through the informal assessment stage, but these are not being implemented, the Council may instruct removal or changes to operations.
- 2.5 There is no charge for this initial request. If a Building Regulations approval, pavement licence or Council lease is required, there may be a fee.
- 2.6 The Council will aim to process applications that seek to take advantage of this initiative as quickly as possible and will contact applicants to inform them of the outcome of the assessment.
- 3. What happens after 23rd March 2022?**
- 3.1 This guidance allows for the erection of temporary buildings and structures (not covered by pavement licenses) for Covid-19 reasons up to and inclusive of 23rd March 2022 (initially) without the need for planning permission in certain circumstances and following assessment. This date is 12 months from



the start of lockdown and reflects the timescale for temporary permitted development rights confirmed by the Coronavirus Act 2020.

3.2 The Council will review its position and the Covid-19 situation at the end of 2020 to determine whether these temporary measures should be extended beyond 23rd March 2022. We will contact you at this stage to inform you of the outcome of the review. Possible outcomes include:

- you are instructed to remove the structure you have erected by the date agreed,
- you are asked to apply for planning permission, or
- these measures continue for an extended period of time, to be agreed.

4. Example Proposals

- **Proposal:** A light industrial business 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.

Result: In principle, this would be supported by the Council.

- **Proposal:** A public house wants to create a covered, open sided area within the curtilage of an existing garden area. This will be temporary measure enabling customers to be outside in adverse weather, reducing pressure on indoor space and enabling social distancing. The hours of operation are not changing.

Result: In principle, this would be supported by the Council.

- **Proposal:** A coffee shop wishes to provide additional tables and seating on the pavement adjacent to the business unit to allow for social distancing.

Result: This type of proposal is not covered by this guidance. The business should contact the Council to apply for a pavement licence.



Appendix A: Temporary Structures – Examples of Planning Considerations

Amenity:

Proposals will be assessed to ensure that they would not cause unacceptable harm to the amenity of nearby areas. In considering harm, the Council will have regard to the temporary nature of proposals but will take account of:

- Impacts on privacy;
- Overbearing (massing) effects;
- Loss of sunlight and daylight;
- Noise, vibration, smells (including from cooking), fumes, smoke, soot, ash, dust or grit;
- Air, water, noise (including playing of music) and light pollution;
- Hazardous substances and industrial processes;
- Traffic generation, access and car parking.

Flooding:

Temporary structures within, or within 3 metres of the functional flood plain (Flood Zone 3b) will not be acceptable.

Temporary structures should not impede access to manholes to major sewers or culverts or access to flood gates, culvert headwalls and screens which may need to be accessed during heavy rainfall;

Highways:

Proposals will be assessed in terms of their potential impacts on footway provision, safety of movement, relationship to bus stops and sight lines. Proposals should not damage the fabric of the highway (including the footway) and not adversely impact on any existing or proposed work programmes.

Accessibility:

Proposals will be expected to consider the needs of disabled people, particularly visually impaired people and wheelchair users.

Heritage:

Proposals will be assessed to ensure that they would not result in damage to listed buildings, be harmful to the Derwent Valley Mills World Heritage Site or other designated heritage assets. If they are physically attached to a listed building then listed building consent would be needed before an application is made.



Other considerations may be taken into account, in line with the provisions of the National Planning Policy Framework (NPPF), Derby City Local Plan Part 1(Core Strategy – 2017) and saved policies of the City of Derby Local Plan Review (2006).



Appendix B: 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 and in the public interest to do so having regard to the development plan and any other material considerations.



The Council 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 inform the Council of proposals they intend to implement or already have implemented. The Council will then assess the proposals 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, having regard to the guidance in the Royal Town Planning Institute (RTPI) Enforcement Handbook².

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.

² <https://www.rtpi.org.uk/media/5306/planning-enforcement-handbook-for-england-final.pdf>



Appendix C – Links to Useful Information

Guidance and Resources:

Working Safely During Coronavirus Guidance:

<https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>

Apply for a Pavement Licence:

<https://www.derbylive.co.uk/hire-our-spaces/outdoor-spaces/street-cafes/>

Federation of Small Businesses Coronavirus Guidance:

<https://www.fsb.org.uk/campaign/covid19.html>

Coronavirus campaign government resources (posters and materials)

<https://coronavirusresources.phe.gov.uk/>

Contacts:

DCC Development Management: developmentcontrol@derby.gov.uk

DCC Licensing: licensing@derby.gov.uk

DCC Highways Maintenance: maintenance.highways@derby.gov.uk

DCC Estates: estates.cor@derby.gov.uk

DCC Conservation: developmentcontrol@derby.gov.uk

DCC Food Safety Team: FoodandSafety.Duty@derby.gov.uk

Cathedral Quarter BID Company: enquiries@derbycathedralquarter.co.uk

St Peters Quarter BID Company: enquiries@stpetersquarter.co.uk

