

Planning Committee

2.00pm, Wednesday, 23 February 2022

Proposed Approach to Planning Enforcement for Temporary Structures for Hospitality

Executive/routine
Wards
Council Commitments

1. Recommendations

- 1.1 It is recommended Committee approves a relaxed approach to planning control for temporary seating structures associated with existing hospitality businesses in order to facilitate additional space for physical distancing.

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Proposed Approach to Planning Enforcement for Temporary Structures for Hospitality

2. Executive Summary

- 2.1 In light of recent coronavirus restrictions on businesses and the Scottish Government's Chief Planner's letter advocating a continued relaxation of planning control, it is recommended Committee approves a relaxed approach to planning control for temporary seating structures associated with existing hospitality businesses in order to facilitate additional space for social distancing. It is intended that this approach will remain in place until 7 October 2022.

3. Background

- 3.1 Hospitality businesses including cafes, restaurants and public houses have again been subject to Coronavirus Regulations which restrict how they operate. These restrictions have reduced the number of people who are able to use the indoor areas of their businesses. As a result, some seek additional outdoor space for tables and chairs, and some have built temporary structures to enable this.
- 3.2 Typically, these structures require planning permission.
- 3.3 Where structures were in place from Spring 2021 to Autumn 2021 and where no planning permission was in place, in light of the coronavirus pandemic, the Council did not take any planning enforcement action.
- 3.4 In Autumn 2021, some businesses applied for planning permission. These applications were subsequently refused. It was noted in the reports to Development Management Sub Committee that, where planning permission is refused, planning enforcement action would not be taken until a proposed approach to planning enforcement for temporary structures for hospitality is considered by Planning Committee.
- 3.5 Where structures are built for seating, these will often require planning permission. Based on the decisions on the above applications, it is unlikely that similar structures would be recommended for approval if planning applications were made for other locations.

- 3.6 Since March 2020, the Scottish Government has encouraged a relaxation of planning control where doing so can help business and services to diversify and continue to operate during the pandemic. On 8 November 2021, the Scottish Government's Chief Planner stated its advice on enforcement relaxation will continue to the end of September 2022.
- 3.7 Planning enforcement as set out in the Town and Country Planning (Scotland) Act 1997 is discretionary. This is because the Act states that the Council "may" act if it appears there has been a breach of planning control and that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
- 3.8 As an alternative to building structures, there are some circumstances outdoor seating may not require planning permission. For example, where tables and chairs are put directly on the surface of the street and removed each day, it is unlikely that planning permission would be required.
- 3.9 Structures placed on a public road require written approval from the Roads Authority. This is currently managed by the Tables and Chairs permit, from powers granted under section 59 of the Roads (Scotland) Act 1984.
- 3.10 It should be noted that planning permission does not automatically entitle structures to be erected. The permission of the owner, the manager or maintainer of the land may be required, which includes, as outlined in 3.9 above, approval from the Roads Authority where a public road is to be used.
- 3.11 Where the seating is being used in connection with the sale of alcohol, a licence under the Licensing (Scotland) Act 2005, will also be required.
- 3.12 This report follows a report to Planning Committee on Summer Festival Installations during Coronavirus Emergency from 19 May 2021. The recommendation of that report, to approve a more relaxed approach to planning control in relation to festival installations in order to facilitate the festivals during the coronavirus emergency for summer 2021, was approved.

4. Main report

- 4.1 It is recommended that a relaxed approach to planning control should continue in respect of seating structures in the following circumstances:
- 4.1.1 Structures on a Public Road or other Council Owned Land: Where a structure is in place that requires planning permission and where planning permission has been refused or where it is identified that an application for planning permission would not be likely to be supported, it is recommended the planning service work with other Council services, to secure the removal of the unauthorised structure with the date for compliance of 7 October 2022. This will allow structures to operate over the Spring and Summer of 2022 and allow a week after the Chief Planner's 30 September 2022 date for an end of enforcement relaxation.

- 4.1.2 Notwithstanding the above, there may be some streets where, because of the way the street is used, it is necessary to remove structures in advance of 7 October 2022. Examples include where streets are used for festival purposes, like the High Street between George IV Bridge and Cockburn Street, George Street in the vicinity of the Assembly Rooms and between Charlotte Square and Castle Street, Hill Street and Hill Square, George Square, Roxburgh Place, Chambers Street, George IV Bridge, St Giles Street, Johnston Terrace, Lawnmarket and Grassmarket. If streets are required for other purposes, businesses will be given a shorter period of road occupancy by Roads Authority. There may be some circumstances where urgent maintenance is required, for example where there is a burst water main or leaking gas pipe. In these cases, structures may need to be removed immediately. Businesses will be made aware of this risk. Where the Roads Authority are not accepting of a proposal/existing structure, a permit to occupy the road will not be issued. In these circumstances, Planning will work with the Roads Authority for the structure to be removed under section 59 of the Roads (Scotland) Act 1984 – Control of Obstructions in Roads.
- 4.1.3 Structures on Private Land: Where a structure is in place that requires planning permission and where planning permission has been refused or where it is identified that the an application for planning permission would not be likely to be supported, it is recommended the planning service serves an enforcement notice requiring the removal of the unauthorised structure with the date for compliance of 7 October 2022. Such a notice will be issued well in advance of the 7 October date to ensure businesses are clear about the requirements and to enable any appeal to be progressed in advance of that date. This will again allow such structures to operate over the spring and summer of 2022 and allow a week after the Chief Planner’s 30 September 2022 date for an end to enforcement relaxation.
- 4.1.4 On private land, where a structure is in place that requires planning permission and where a planning application has not been made but would be likely to be supported, owners will be asked to apply for planning permission and if necessary, served a notice requiring the submission of a planning application.
- 4.2 The above circumstances would allow additional structures to be installed.
- 4.3 It is understood that there is interest from businesses in the first New Town to have tables and chairs structures between April and September. If the criteria above are approved, subject to an installation not impacting on disabled persons’ parking spaces, taxi ranks or causing what the road’s authority consider an obstruction, it would be possible for additional structures to be put in place for that time.
- 4.4 Where businesses seek advice on outdoor seating, they will be advised of the above criteria and about whether there may be a way of having outdoor seating without breaching planning control.

- 4.5 Where structures are on a road and have not been removed by the dates required and therefore action is required under Section 59 of the Roads (Scotland) Act 1984, the Council will write to the business and advise them of the requirement to remove the structure. If the structure is not removed, the Council can take direct action to remove it and recover its expenses.

5. Next Steps

- 5.1 If the recommendations of this report are agreed, the planning service will write to the businesses outlining the approach to be taken and will follow these initial letters with enforcement notices as necessary.
- 5.2 Planning will continue to work with the Transport service to ensure there is a joined up approach to the approach set out above.

6. Financial impact

- 6.1 There is no financial impact arising from this report.

7. Stakeholder/Community Impact

- 7.1 There has not been engagement with business or communities regarding the proposed approach to planning enforcement, however the applications submitted for some of these structures allowed public participation through the neighbour notification process.
- 7.2 The contents and recommendations neither contribute to, nor detract from, the delivery of the three Public Sector Equality Duties.
- 7.3 In relation to road safety, impacts can be managed under section 59 of the Road Roads (Scotland) Act 1984 – Control of Obstructions in Roads.
- 7.4 There are no impacts in relation to carbon, adaptation to climate change or sustainable development.

8. Background reading/external references

- 8.1 [Letter from Scottish Government Chief Planner of 8 November 2021.](#)
- 8.2 Scottish Government advice and guidance – [Coronavirus \(Covid-19\): tourism and hospitality sector](#)
- 8.3 [Town and Country Planning \(Scotland\) Act 1997](#)
- 8.4 [Section 59 of the Roads \(Scotland\) Act 1984](#)
- 8.5 [Licensing \(Scotland\) Act 2005](#)

- 8.6 [Report to Planning Committee on Summer Festival Installations during Coronavirus Emergency of 19 May 2021.](#)

9. Appendices

- 9.1 None.