



## Outdoor Areas, Permitted Development and Temporary Structures.

**This information has been developed by a cross-sector group looking to reduce risk for licensed premises operating during the current pandemic and so ensure the safety of the public, premises staff and officers and provide clarity for all involved.**

The Government has encouraged the use of outdoor areas to help businesses recover from the coronavirus pandemic.

Under Step 3 since May 17, hospitality premises are able to admit customers indoors, but will still want to use their outdoor areas to maximise trading space and facilitate social distancing.

The Government has attempted to assist hospitality premises with new permitted development rights under the Planning regime.

[MHCLG Minister, Robert Jenrick wrote to local authorities on 5 March 2021](#) saying:

**“Freedom to use land for community events and outdoor hospitality.**

Last year we provided greater flexibility for businesses to hold outdoor events such as summer fairs or motorsports on land without the need for a planning application, while events such as car-boot sales, or people or **businesses such as pubs** wishing to set up marquees will also be exempt. We have increased the number of days allowed for such

temporary events from 28 to 56, and in November extended this provision until 31 December 2021”.

### **Class B, permitted development.**

There have always been permitted development rights for a temporary change of use of any land for any purpose, ( with a few limitations unconnected to hospitality), for up to 28 days a year. Any moveable structure can be provided on the land during this time for the purposes of the temporary permitted use.<sup>1</sup>

The Government has extended these permitted development rights as a response to the COVID crisis.

### **Class BA, permitted development.**

New Class BA was introduced into the General Permitted Development Order 2015 on 25 June 2020, and this has been further extended to authorise an additional 28 days of change of use, on top of the original Class B permission, making a potential 56 days in total.

There is an anomaly, however. Original Class B only applies to land *outside* the curtilage of a building. The “curtilage” of a building, in broad terms means the land that surrounds the building and is closely associated with the building. There is no specific limit on its extent – that depends upon the building. A garden, courtyard, and car-park would be typical examples of a “curtilage”.

Class BA allows the change of use of any open land, *including* land *within* the curtilage of a building, provided it is not a listed building.

The discrepancy between Class B and Class BA concerning the curtilage seems to be a mistake by the Government in drafting the amendments to the Order. In practice, it appears

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<sup>1</sup> The Town and Country Planning (General Permitted Development) (England) Order 2015 (2015 No. 596). (As amended). PART 4 - Temporary buildings and uses: Class B – temporary use of land

that if the temporary structure is always going to be outside the curtilage of a building, then the full 56 days are permitted. If the temporary structure is intended to be inside the curtilage, then only 28 days of permitted development use can be utilised within the curtilage of the building. Any further days would have to be outside the curtilage. Failure to comply with this difference would become an enforcement issue, and as set out below, enforcement is a matter of discretion for the Local Planning Authority. If you find yourself in this difficult situation, then it may be a good idea to have a discussion with your local Planning Officers, to see if they would regard it as expedient to enforce against the location of your temporary structure. They may agree on its position, whether it is technically within, or outside the curtilage.

Putting up and taking down facilities / structures counts towards the total number of permitted “temporary” days. Leaving the facilities and structures in place in between uses may also count towards the total number of days. Unless the site reverts to its previous/normal use in between the days of the temporary use, then if the site is set up and arranged for the use, eg: toilets; structures; signage, etc. – it is still in that use, and counting towards the total number of permitted days, even if there are no visitors/ customers or activity.

The definition of a “temporary” or “moveable structure” is actually a complex planning question. The three tests are:

- (i) The construction of the structure on site – if it is pre-fabricated and doesn’t require a builder it will be likely to pass the test;
- (ii) Permanence of the structure – if it is temporary and there is an end date for removal, it will be likely to pass the test;
- (iii) The structure’s physical attachment to the land – if it is not physically attached to the land, or can be very quickly and easily removed, then it will be likely to pass the test.

### **Class BB, permitted development.**

A third new permitted development right for moveable structures was introduced from 16 April 2021. New Class BB ( of the same 2015 Order) allows “moveable structures for

specified uses”. This comprises the temporary provision of any moveable structure, such as a marquee, *within* the curtilage of *certain types* of buildings without planning permission.

It applies to England and Wales only. The right will expire on 1 January 2022.

The right applies only to buildings being used as a public house, wine bars, drinking establishments (with or without food provision), buildings used for the sale of food and drink for on-consumption, and historic visitor attractions in listed buildings. The moveable/temporary structure, such as a marquee, must be situated within the curtilage and associated with the use of the building.

These marquees or similar structures still have to comply with the rules about “indoors” and “outdoors” – ie: the 50% rule, that comes from the Smoking Regulations.

This new permitted development right BB does not change anything about the applicability of the Planning (Listed Building and Conservation Area) Act 1990. If the provision of any moveable structure would cause the alteration, demolition or extension of a listed building in any manner which would affect its character as a building of special architectural or historic interest, then a listed building application would still be required.

If your building already has planning permission with a condition or restriction upon it that says you are not permitted to have any moveable structures, it is not clear whether this new permitted development right overrides that. Local Planning Authorities ( the Council) have been encouraged by the Government to take a pragmatic approach to enforcement generally, and Planning Enforcement Notices only get served where it is “expedient” to do so in any event. So, it is not inevitable that a planning condition would prevent you from having a temporary structure in these pandemic circumstances, but it would be sensible to seek expert advice about your particular situation.

Please note that this document does not constitute legal advice but is the group’s considered opinion of the matters contained within.

Dated 15th June 2021

Sarah Clover (Kings Chambers)

Jim Cathcart (UKHospitality)

Ian Graham (National Police Chiefs' Council, Licensing Advisory Group)

John Miley (National Association of Licensing Enforcement Officers)

Andrew Green (British Beer and Pub Association)

David Lucas (Institute of Licensing)

Leo Charalambides (Kings Chambers)

Ellie Greenwood (Local Government Association)

Mike Kill (Night-Time Industry Association)