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2 July 2020

Dear Colleague,

PLANNING AND COVID-19: USE OF OUTDOOR SPACES AND THE '28-DAY RULE'

In our [letter of 29 May](#), we encouraged a supportive, pragmatic and flexible approach to temporary developments and changes of use which would enable businesses to diversify or adjust the way they operate as the lockdown eases and many people can get back to work.

This letter seeks to build on that guidance, with a specific reference to uses of land which can already happen in line with time-limited permitted development rights, and also in recognition of current interest in temporary outdoor uses such as the provision of outdoor seating by pubs, cafés and restaurants, including beer gardens. As the hospitality industry re-opens with physical distancing measures, we want to encourage the sector to take steps to provide a safe and pleasant environment for customers. This will also assist the viability of the sector.

In the main, the most appropriate, straightforward and efficient way planning can allow for reasonable temporary changes of use during this period is through informally relaxing planning controls; particularly by agreeing not to take enforcement action against acceptable planning breaches that will allow for businesses to operate and for some normality to return to life within our communities.

Planning enforcement is a discretionary activity and Scottish Government policy and guidance sets out that planning authorities should act proportionately in responding to suspected breaches of planning control. We have written several times since the start of the COVID-19 outbreak to discourage enforcement action in different circumstances, to allow the effects of the virus and physical distancing to be addressed for planning interests. That remains a reasonable approach at this time.

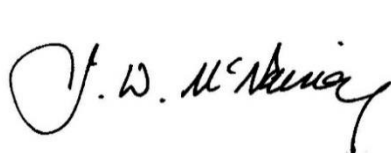
Planning law already allows for the temporary use of land or buildings for up to 28 days in a calendar year without the need to make an application for planning permission – the '28 day rule'. This is set out in Class 15 of the *Town and Country Planning (General Permitted Development) (Scotland) Order 1992*; specifically allowing the “use of land (other than a building or land within the curtilage of a building) for any purpose, except as a caravan site or an open air market, on not more than 28 days in total in any calendar year, and the erection or placing of moveable structures on the land for the purposes of that use”.

This means, as an example, the use of part of a public footpath for outdoor seating by a café for up to 28 days in a calendar year already has the benefit of planning permission. While physical distancing requirements remain, it is likely that many temporary uses will be needed for longer periods. In line with the wider approach to relaxing planning control at this time, and for the avoidance of doubt, we do not expect the limits of the 28 day rule to be enforced against reasonable temporary outdoor uses, which may include temporary structures, should a longer period be appropriate and helpful to businesses.

We will review the need for the guidance outlined above in September 2020, and it is our intention to withdraw it once physical distancing is no longer required.

Beyond the planning system, there will likely be some wider interests for businesses and local authorities to consider through other consenting and licensing regimes and any public health implications, including working within physical distancing requirements. We would draw your attention to recent guidance issued by the Scottish Government in relation to [occasional licenses for licensed premises](#) and [temporary traffic regulation orders and notices](#). In addition, our guidance on [Safer Public Spaces for Scotland](#) published on 29 June advises on the design principles for safer urban centres and green spaces, connecting to Scotland's route map through and out of the crisis.

Yours faithfully



John McNairney
Chief Planner



Kevin Stewart
Minister for Local Government, Housing and Planning