

# Using the public realm to trade safely during the COVID-19 pandemic

**Note: Nothing in this guidance note supersedes the Government advice and/or legislation closing certain businesses and venues in England. You cannot trade or open unless legislation allows it. [You can check if your business can trade on the gov.uk website.](#)**

The council has set out a commitment, through its recovery strategy, to support businesses with a range of practical measures to enable them to reopen and trade safely including:

1. *We will seek to implement policy measures that encompasses a review of the use of the public realm as a whole to facilitate business reopening and trading with adequate public safety measures. This will include:*
  - a) *Increasing the footprint for the use of tables and chairs in the public realm*
  - b) *Working with Gloucestershire County Council to identify roads that could be closed to vehicular traffic or adapted to better utilise the public realm as a means to support business recovery*

This guidance aims to clearly set out the parameters for using the public realm to trade safely during the COVID-19 pandemic and provide further practical advice for seeking permission from the council to do so.

For the avoidance of doubt, public realm refers to public highway either maintained at the public expense, or public highway privately maintained but where there exists a public right of passage. Please also refer to “Is a council permit required?” below for further guidance.

## Sufficient space

The first and most important consideration is whether you have adequate outside space to use.

1. Guidelines issued by Gloucestershire County Council Highways states that a minimum of 3m (or approx. 10 feet) must be maintained on all footways/paths. This means that where your business is occupying pavement space, there must be a minimum of 3m (approx. 10 ft) unobstructed space between the outer edge of your tables and chairs space and the edge of the pavement or to the edge of another obstruction. Please refer to [Appendix 1](#) below for illustrations.
2. Inside the area where you place your objects (i.e. tables and chairs), you will be required to maintain 2m (or approx. 6 feet) social distancing, where possible. Please refer to [Appendix 1](#) below for illustrations.

[The Government’s guidance](#)<sup>1</sup> states that where the 2m (approx. 6 ft) cannot be maintained, you should do everything practical to manage the transmission risk by:

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<sup>1</sup> Sector specific guidance has not been published by the Government. Please note this guidance is subject to change as official Government guidance is issued.

- considering whether an activity needs to continue for the business to operate
- keeping the activity time involved as short as possible
- using screens or barriers to separate people from each other
- using back-to-back or side-to-side working whenever possible
- staggering arrival and departure times
- reducing the number of people each person has contact with by using 'fixed teams or partnering'

Whilst these apply to a workplace, the principles could be applied to the use of public realm to trade safely during the COVID-19 pandemic.

3. You need to be mindful of any other businesses in the close vicinity of yours that are, or might, use public realm space during their trading hours. In these circumstances, there will need to be clear separation between your business and other businesses at a minimum of:
  - 2m (6 feet) where the other businesses are adjoining yours on one or both sides; or
  - 3m (10 feet) where other businesses are located opposite yours.

Please refer to [Appendix 1](#) below for illustrations.

4. You also need to consider how other more general social distancing measures can be supported, such as queuing outside your business. Consideration points for the management of social distancing in the public realm when queuing to enter business include:
  - Other queues to other business
  - Other general queues for cash machines, places where people are waiting for others, bus stops etc.
  - Available space footpaths and roads
  - Ability to clearly signpost (Cheltenham businesses can contact the Cheltenham BID for sourcing social distancing stickers)
  - Traffic control and risks to and from cars, cycles and other pedestrians walking by
  - How roads and pavements might be divided up
  - Which street and business premises may have the issues
  - Limiting the number of people queuing, particularly where your business adjoins others where people will be queuing too

This assessment will form part of your overall COVID-19 risk assessment. Further guidance on "[Managing your customers, visitors and contractors](#)" can be read online.

There will unfortunately be some premises that may not be able to put effective social distancing measures in place at all, in which case they will need to remain closed.

## Is a council permit required?

In most cases, a permit will be required from the council to place objects outside your business where the public realm space you are looking to use is classed as public highway. A public highway is defined in common law to mean:

All roads, bridges, carriageways, cartways, horseways, bridleways, footways, causeways, churchways, and pavements *over which there exists a public right of passage, that is to say a right*

*for all Her Majesty's subjects at all seasons of the year freely and at their will to pass and repass without let or hindrance.*

The requirement to obtain a permit from the council will not apply under the following circumstances:

1. Inside or on any parks or green spaces;
2. On private land over which there exists no public right of passage or way.

## Applying for a permit

The council's application procedure is [published on the council's website](#).

There is a statutory 28-day consultation period for new applications. Businesses wishing to use public realm to trade safely could expedite this process by speaking to neighbouring properties (adjacent and opposite) to get their consent. We will ask for written confirmation from affected neighbouring properties confirming they have no objections – this is a statutory requirement.

The 28-day consultation requirement does not apply to existing consents that are varied.

The length of permits for the use of public realm to trade safely during the COVID-19 pandemic will be temporary, reflecting Government advice and restrictions. Initial permits will be issued for a period of up to 6 months.

Permits will be subject to the [council's standard conditions](#) including a requirement to remove these from the public highway at the end of trading and the requirement to use barriers to clearly demarcate licensed areas.

## Other considerations

1. **Noise and other nuisance:** The council must balance the use of the public realm 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 between 08:00 and 22:30 bearing in mind the terminal hour will be subject to change in a case-to-case basis.
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 FAQs for advice and more information. [[link](#)]
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.
4. **Planning permission** – The council has agreed to relax planning requirements for the creation of outside seating areas and gazebos on private frontages to facilitate social distancing by customers. This means the council will not enforce against such structures for the period where there is an on-going economic impact relating to Covid-19.

Note however that unfortunately, the physical constraints on some businesses will not allow them to use structures over their outside seating areas. There will therefore be some

premises, which may not be able to put effective social distancing measures in place at all, in which case they will need to remain closed. [\[link\]](#)

5. **Street trading:** The use the public realm to trade safely during the COVID-19 pandemic cannot be used for [street trading without a separate trading consent](#).
6. **Regulation and enforcement:** Through this guidance and more generally 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](#) available on the website.

## Contact

If you would like further information or advice:

1. Licensing: [licensing@cheltenham.gov.uk](mailto:licensing@cheltenham.gov.uk)
2. Public protection and environmental health: [envhealth@cheltenham.gov.uk](mailto:envhealth@cheltenham.gov.uk)
3. Planning: [planning@cheltenham.gov.uk](mailto:planning@cheltenham.gov.uk)

Appendix 1 – Illustrations (not to scale)

