

Item: 6

Licensing Committee: 20 August 2020.

Civic Government (Scotland) Act 1982 – Raised Structures.

**Joint Report by Executive Director of Corporate Services and
Executive Director of Development and Infrastructure.**

1. Purpose of Report

To consider introducing a minimum height specification for raised structures requiring an application to be submitted to the Council for consent in terms of section 89 of the Civic Government (Scotland) Act 1982.

2. Recommendations

The Committee is invited to note:

2.1.

That, in terms of section 89 of the Civic Government (Scotland) Act 1982 (the 1982 Act), the Council has a statutory remit to determine applications for consent for the use of raised structures, being a platform, stand, staging or other similar structure, for the provision of raised seated or standing accommodation.

2.2.

That section 89 of the 1982 Act does not contain any provision specifying a height below which consent for a raised structure would not be required.

2.3.

That, in terms of Building Standards Guidance, certain security measures, including protective guarding, need to be put in place for structures which have a height of 600 millimetres (mm) or more.

2.4.

That research conducted with other Scottish local authorities identified that a majority only require an application for consent to be submitted in respect of raised structures of heights of 600 mm or more in accordance with Building Standards Guidance referred to at paragraph 2.3 above.

2.5.

The options in respect of introducing a minimum height specification for raised structures requiring an application for consent to be submitted in terms of section 89 of the 1982 Act, as detailed in section 8 of this report, with the preferred option being Option 3, namely to introduce a minimum height specification of 600 mm or more, below which an application for consent would not be required.

It is recommended:

2.6.

That the Council should adopt the following interpretation of “raised structure” for the purpose of the requirement in section 89 of the Civic Government (Scotland) Act 1982 of obtaining consent from the Council for the use thereof:

- A platform, stand, staging or similar structure for the provision of raised seated or standing accommodation that is 600 mm or more in height.

2.7.

That, in all other cases, where the height of the raised structure is less than 600 mm, consent shall be deemed to be in place, with no application for formal consent requiring to be submitted.

3. Introduction

3.1.

Section 89 of the Civic Government (Scotland) Act 1982 – Safety of platforms etc – provides:

(1) No person shall use or permit the use of a raised structure for the purpose of providing for himself or others raised seated or standing accommodation, unless such use has been approved by the local authority in whose area the raised structure is situated.

(2) In this section a “raised structure” means a platform, stand, staging or other similar structure.

(3) The local authority shall grant their approval of the use of a raised structure under subsection (1) above if they are satisfied that it:

(a) has been safely constructed and secured; and

(b) has sufficient means of entrance and exit including means of escape in case of fire or other emergency in relation to the circumstances in which it is to be used; but not otherwise.

(4) Where:

(a) Part 3 of the Fire (Scotland) Act 2005 (the 2005 Act) applies in relation to the premises where the raised structure is situated; and

(b) the local authority are not the enforcing authority (as defined in section 61(9) of the 2005 Act),

the local authority shall consult the enforcing authority before making their decision under subsection (3)(b) above.

(4A) Where:

(a) Part 3 of the 2005 Act does not apply in relation to the premises where the raised structure is situated;

the local authority shall consult the Scottish Fire and Rescue Service before reaching their decision under subsection (3)(b) above.

(5) The local authority may, when granting their approval of the use of a raised structure under this section or at any other time thereafter, impose by notice served on the person to whom approval is being or, as the case may be, has been granted such conditions as they think necessary relating to such use, and the conditions may include a condition as to the maximum number of persons permitted to use the raised structure and a prohibition on its use for so long as the conditions contained in the notice have not been complied with.

(6) Any person who:

(a) uses or permits the use of a raised structure for the purpose of providing for himself or others raised seated or standing accommodation without the approval of the local authority under subsections (1) and (3) above; or

(b) contravenes a condition contained in a notice served on him under subsection (5) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale [currently £2,500].

(7) This section shall not apply to:

(a) any structure in respect of which a building warrant has been granted;

(b) any structure in respect of which such a warrant, by reason only of the date when it was built, was not required; or

(c) scaffolding or similar equipment used in connection with work on a building or other structure. In this subsection, "building warrant" means a warrant for work for construction or for conversion of a building granted under section 9 of the Building (Scotland) Act 2003.

(8) Nothing in this section affects any requirement to obtain approval or any other obligation imposed by or by virtue of any other enactment.

(9) The local authority shall charge such fees in respect of the discharge of their functions under this section as may be resolved by them from time to time and shall seek to ensure that the total amount of such fees is sufficient to meet the expenses incurred by them in that respect.

3.2.

The Council publishes information about the requirement to obtain consent for raised structures, together with an application form, via Related Downloads at <https://www.orkney.gov.uk/Service-Directory/R/Raised-Structures.htm>.

3.3.

The Council currently charges an application fee of £83 for any application for consent for a raised structure. Fees are published in a Related Download at <https://www.orkney.gov.uk/Service-Directory/L/civic-government-licensing.htm>.

4. Information Regarding Height Specifications

4.1.

Section 89 of the 1982 Act does not contain any provision specifying a height below which consent for a raised structure would not be required. The Council has always required consent to be obtained for any raised structure of any height.

4.2.

The Principal Building Standards Officer advises that in terms of Building Standards Guidance, certain security measures, including protective guarding, need to be put in place for every raised floor or other raised area to which people have access, where there is a difference in level of 600 mm or more.

4.2.1.

The rationale is that at that level of height, special precautions are considered necessary to mitigate against risk of persons falling and sustaining injury.

4.2.2.

Other sections of the Building Standards Guidance include references to differences in heights of more than 600 mm, for example for opening windows or for handrails to stairs and ramps.

4.3.

Research carried out by the Licensing Service identified that 28 of the 32 Scottish local authorities (including Orkney) issue consents for raised structures. The websites of 3 local authorities were silent on the matter and contact via email did not receive a response. One local authority advised that they were considering the introduction of consents in terms of section 89 of the 1982 Act but their system was not currently in operation. Of the 28 authorities:

- 15 require consents for raised structures of 600 mm or more, which is consistent with Building Standards Guidance in relation to differences in heights of raised floors or other raised areas to which people have access.
- 9 require consents for raised structures of over 600 mm (so 601 mm or more), which is consistent with Building Standards Guidance in relation to differences in heights for opening windows or for handrails to stairs and ramps.
- 3 require consents for raised structures of any height, including below 600 mm (this includes Orkney), which is consistent with the 1982 Act; and
- 1 was silent regarding any height requirements and did not respond to email enquiries.

4.4.

The Licensing Service has received representations from an Elected Member on behalf of an applicant who required to obtain consent for raised structures of heights of 600 mm and 800 mm to be located at the Mart, Hatston, Kirkwall for music and dance party night events. The service has not received any representations from anyone who has had to apply for consent for a structure measuring less than 600 mm in height.

4.4.1.

The Licensing service believes that for safety reasons it is important that consent should require to be sought for structures, particularly when the premises – such as the Mart – are not designed or routinely used for entertainment events. Further, all of the applications for raised structure consents for the Mart referred to above have been for 600 mm or more, so would have required consent even if the Council had a similar policy to the majority of other authorities regarding minimum height.

5. Conditions

5.1.

In terms of section 89(5) of the 1982 Act referred to above, the Council has applied the following standard conditions, developed with the help of the Building Standards service and in use for many years, to consents for raised structures:

- You shall ensure that all works are undertaken in accordance with the IStructE Guide to Temporary demountable structures Third Edition.
- You shall ensure that the structure as erected (including, for the avoidance of doubt, the access steps) is certified by a chartered engineer in accordance with IStructE Guidance prior to the use of the structure. You shall deliver the certificate to this office by [insert date].
- You shall arrange to have the electrical installation to the raised structure inspected and certified as safe by a NICEIC certified electrician and shall ensure that the electrical installation is covered by a BS7671 Electrical Compliance Certificate, prior to the use of the structure. You shall deliver the certificate to this office by [insert date].

5.1.1.

These conditions are similar to those imposed by the majority of Scottish local authorities which process applications for raised structures.

5.2.

The Principal Building Standards Officer advises that the IStructE Guide to Temporary demountable structures Third Edition has been superseded by the Fourth Edition. The Council's standard conditions referred to at section 5.1 above shall be updated accordingly.

5.3.

The Principal Building Standards Officer advises that an electrical compliance certificate should be required where new works, for example the provision of a new electrical socket, are required to facilitate use of the raised structure. That would be a requirement of building regulations in any building where public access was permitted. However, the use of portable electrical equipment, for example the connection of extension leads to an existing and approved electrical circuit within a building, would not require any certification under building regulations, and an electrical compliance certificate should not be required. The Council's guidance for applications for raised structure consents will be updated accordingly and the condition attached to any raised structure consent requiring an electrical compliance certificate will only be required where new works are carried out and with the advice of the Principal Building Standards Officer.

5.4.

The Council has a duty in terms of section 89(3) of the 1982 Act referred to above to satisfy itself that a raised structure:

(a) has been safely constructed and secured; and

(b) has sufficient means of entrance and exit including means of escape in case of fire or other emergency in relation to the circumstances in which it is to be used; but not otherwise.

5.3.1.

Accordingly, the Licensing Service believes that it is essential that technical drawings and safety sign-offs be obtained in respect of raised structures.

5.3.2.

It should be noted that technical drawings – available from manufacturers or providers of purpose designed staging in modular form – are required as part of an application for raised structure consent to inform consultees (Planning, Building Standards, Environmental Health, Police Scotland and the Scottish Fire and Rescue Service) of the details of the proposed structure for safety purposes. All Scottish local authorities processing applications for raised structures require such documentation as a minimum component of the application.

5.3.3.

The majority of Scottish local authorities processing applications for raised structures require applicants to provide Design Certificates and Certificates of Completion signed by structural or civil engineers as part of their application documentation.

6. Safety and Resilience Team

6.1.

The Safety and Resilience Team is consulted on applications for consent for the use of raised structures which are to be constructed or provided on Council premises, for example the use of the rear of an articulated lorry at Bignold Park for the County Show.

6.2.

The Safety and Resilience Team advises that, having reviewed the proposal, it seems a sensible move to introduce a height standard and that responsibility for enforcement of the requirement lies with the Environmental Health Service in conjunction with the Health and Safety Executive.

7. Environmental Health

7.1.

The Environmental Health Service confirm that they consider it would be sensible to introduce a height standard.

7.2.

The service had concerns about modular systems designed to be exactly 600 mm (or less) but, due to uneven floors on-site, the structure, such as staging, may need to be packed or wedged up in places resulting in a situation where the on-site height may be a little over 600 mm in places. The view of the service would be that the packing or wedging would potentially introduce additional stability risks. The service requested that the Council's guidance for applications for raised structure consents should indicate that in such cases the structure would require consent. The Council's guidance will be updated accordingly.

8. Options

8.1.

There are three options to be considered in respect of considering what action to take with regard to the introduction of a minimum height specification for raised structures requiring an application to be submitted to the Council for consent in terms of section 89 of the 1982 Act.

8.2.

Option 1: Do not introduce any minimum height specification for raised structures requiring an application for consent and continue the status quo, requiring consent for a raised structure of any height to be applied for.

8.2.1.

The Council is one of a small minority of 3 Scottish local authorities processing applications for raised structures which do not specify a minimum height below which an application for consent will not be required.

8.2.2.

The Council has received representations from an Elected Member on behalf of an applicant requesting that introduction of a minimum height specification be considered.

8.3.

Option 2: Introduce a minimum height specification of over 600 mm (so 601 mm or more) below which consent will be deemed to be granted and an application for consent will therefore not be required, in a similar manner to a minority of Scottish local authorities which specify a minimum height requirement (9 out of 27).

8.3.1.

Introduction of a minimum height specification of over 600 mm (so 601 mm or more) would not be inconsistent with Building Standards Guidance, albeit such guidance refers to differences in heights in relation to opening windows or for handrails to stairs and ramps rather than raised floors or other raised areas to which people have access.

8.4.

Option 3: Introduce a minimum height specification of 600 mm or more below which consents for raised structures will be deemed to be in place and therefore no application for consent would be required, in a similar manner to the majority of Scottish local authorities which specify a minimum height requirement (15 out of 27).

8.4.1.

Introduction of a minimum height specification of 600 mm or more would be consistent with Building Standards Guidance in relation to differences in heights of raised floors or other raised areas to which people have access.

8.4.2.

During 2019 and 2020 the Council has processed applications for consent for raised structures of heights of 600 mm and 800 mm to be located at the Mart, Hatston, Kirkwall for music and dance party night events. It may be considered prudent for safety reasons to require structures of 600 mm height to require an application for consent to be submitted, particularly when the premises – such as the Mart – are not designed or routinely used for entertainment events.

8.5.

The preferred option is Option 3. This would bring the Council into line with the majority of Scottish local authorities processing applications for raised structures which specify a minimum height requirement, below which consent will be deemed.

9. Corporate Governance

This report relates to the Council complying with its statutory duties as a Licensing Authority and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

10. Financial Implications

There are no direct financial implications to the Council arising from the recommendations of this report.

11. Legal Aspects

The legal aspects are contained within the body of this report.

12. Contact Officers

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