

Kirklees Planning Services

Going Smokefree - A planning advice note on smoking shelters and related features

Purpose of this Note

- To provide planning guidance on the provision of facilities for smokers, in the context of compliance with the new health legislation. Please note this guidance note is not a definitive interpretation of the law. You should take independent legal advice before submitting any planning application for a smoking shelter.
- To advise on the need for planning permission and the factors to be taken into account in deciding whether or not such permission will be granted

Background

- Smokefree legislation in the Health Act 2006 comes into force England at 6am on Sunday 1 July 2007
- Aim - to create smokefree places and to protect workers and public from harmful effects of passive or secondhand smoke
- Introduces a statutory smoking ban in “**enclosed**” and “**substantially enclosed**” premises
- The new law will affect most public premises, including restaurants, pubs, bars, shops, cinemas, shopping centres, leisure centres, offices, factories and other enclosed workplaces and public transport
- exemptions include:
 - private accommodation, but not common parts, e.g. staircases and lifts
 - designated bedrooms in hotels which must be signposted as ‘smoking rooms’ and their ventilation systems should not link with smokefree areas and doors should close mechanically.
 - other residential accommodation in care homes, hospices, mental health units
 - prisons for adults
- Evidence from Ireland (ban from March 2004) and Scotland (ban from March 2006) shows many licensed premises will seek to provide facilities such as smoking shelters, canopies or other covered outside areas for smokers which, combined with the use of outdoor space heaters, allow use in most weathers
- These structures will have some form of roof, and a combination of walls and openings to comply with the Health Act provisions

What is Meant by “Enclosed” and “Substantially Enclosed” Premises?

- whether a proposed smoking shelter or related structure complies with the relevant health legislation is not a planning judgement - it is a matter for the Council as Environmental Health Authority, who will enforce the legislation
- however, it is necessary to understand fully the use of these terms in the new health legislation

- “**enclosed**” premises have a ceiling or roof and, except for doors, windows and passageways, are wholly enclosed, either permanently or temporarily e.g. tents, marquees, conservatories.
- “**substantially enclosed**” the structure has a roof, ceiling or other device which is capable of covering all or part of the structure as a roof (fixed or moveable) with less than 50% opening in the walls. This is known as the ‘50% rule’. No account is to be taken of openings that include doors, windows or other fittings that can be opened or shut.
- In summary, a smoking shelter may have a roof and walls, where the permanent openings in the walls have a total area that is the **same or more than** the total area of walls.
- **Be aware:** you need to ensure that your proposed shelter is not “**substantially enclosed**” - if it is then it would not comply with the Smokefree Regulations.
- you should also be aware that siting a smoking shelter too close to walls of adjacent buildings or fences could have the effect of enclosing the structure to the point where it would become “**substantially enclosed**”
- Environmental Health advice will always be sought on planning applications for smoking shelters and related features to ensure compliance with Smokefree requirements.

The Need for Planning Permission

The following operations and uses will probably need planning permission -

- Permanent external smoking shelter structures, whether freestanding or attached to existing buildings. Any structure that needs foundations and/or cannot be easily disassembled will be regarded as ‘permanent’
- Awnings / canopies / blinds attached to buildings – these will almost always have a material effect on the external appearance of a building
- Use of any land as a beer garden or yard, where the land does not form part of the business premises
- Construction of timber decking

: The following operations and uses will probably not need planning permission -

- Portable freestanding awnings / canopies and space heaters. If permanently fixed to the ground they will need planning approval.
- The use of beer gardens and yards, where these are ancillary to the main pub / restaurant use and are lawfully part of the existing business. **Note – you will need a licence to place chairs or tables on the public highway.** Applications should be made to Kirklees Licensing Service who can be contacted on 01484 223470 or e-mail licensing@kirklees.gov.uk

This list is not exhaustive. Where there is any doubt about the need for planning permission you should check with the Council’s Planning Service before proceeding.

Lawful Development Certificate or Planning Application?

You can check the need for planning permission formally by submitting an application for a certificate of lawful proposed development, or informally by seeking advice from the Planning Service.

Application forms for a certificate of lawful development, or for planning permission, can be downloaded from the Council's website, (<http://www.kirklees.gov.uk> – see 'Online Forms' available from the Home Page) or obtained from the Planning Service. A fee is payable, details of which are available from the web site.

Detailed guidance on the submission of applications is available from Planning Services and on our website. (<http://www.kirklees.gov.uk/planning>). **Applications for smoking shelters should include calculations to demonstrate that the structure would not be "substantially enclosed"**.

Planning applications for smoking shelters and related structures normally take up to 8 weeks from the time we receive a valid application

Material Considerations

All planning decisions are based upon planning policies contained within the Council's adopted development plan, related guidance, and any other material considerations.

When assessing a planning application for a shelter, awning or similar structure, the Council will seek to ensure that the facilities are well designed and sensitively sited in a way that:

- enhances the street scene, and
- protects the safety and free flow of pavement users
- has no detrimental impact on the amenity of neighbouring residents

In particular:

- Is the shelter / awning or other structure in a prominent location?
- Is the structure well designed, using appropriate materials, and in character with the existing building?
- Will the location / siting of the shelter / awning have any adverse amenity impact in terms of:
 - visual intrusion
 - character and appearance of the area
 - loss of outlook
 - overlooking of adjacent residential premises
 - light pollution
 - siting adjacent to doors / windows/ air intake systems - whether within or adjacent to the premises
 - secondhand smoke infiltration into adjacent residential or commercial premises
 - introduction or intensification of activity and disturbance near noise sensitive premises, particularly in the late evening (e.g. placing a shelter near adjacent houses).
- Will the siting of the shelter / awning result in loss of parking spaces, with associated impact on parking problems in the vicinity?
- Will the shelter / awning obstruct or block an adjacent public footpath or road to the detriment of pedestrian or traffic safety?

In general, canopies / shelters / heaters and similar structures sited on the public highway or on other public spaces are unlikely to be permitted. Proposals affecting premises in a conservation area, or affecting a listed building, will be particularly sensitive. The design of any smoking related shelter would need to be of exceptional quality if it were not to affect the character or setting of a listed building, or the character or appearance of a conservation area.

If planning permission is granted, conditions may be imposed to restrict, for example, the transmission of music or any other amplified sound to any noise-sensitive boundary, or hours of operation (although more likely to be addressed under licensing provisions). In some cases, temporary permission may be granted to allow the review of any impact in sensitive locations.

Advertisement Consent

If you propose to provide new external signs, for example, to direct customers to smoking shelters, you may need to make a separate application for Advertisement Consent. Application forms and guidance can be downloaded from the Planning Service website (<http://www.kirklees.gov.uk/planning>).

The main concerns in deciding whether to grant consent will be:

- Highway safety - for example, would the sign cause obstruction to pedestrians or traffic?; and
- Amenity - would the sign be visually obtrusive - particularly in a conservation area, or on a listed building - or add to advertisement clutter?

Building Regulations Approval

The following structures are currently exempt from control under the Building Regulations:

- A small detached single storey buildings with an internal floor area of not more than 30m² which contains no sleeping accommodation, and is sited at least 1m from the site boundary or constructed substantially of non-combustible material
- A small detached single storey building with an internal floor area of not more than 15m²
- The extension of a building by the addition at ground level of:
 - a) A conservatory, porch, covered yard or covered way; or
 - b) A carport open on at least two sides;where the internal floor area of that extension does not exceed 30m², provided that in the case of a conservatory or porch which is wholly or partly glazed, the glazing satisfies the requirements of Part N (Glazing - safety in relation to impact, opening and cleaning) of the Building Regulations 2000

Premises Licences and Club Premises Certificates under the Licensing Act 2003

Pubs or clubs holding a premises licence or club premises certificate may need to make a formal application for variation of the licence/certificate when erecting a permanent smoking shelter or arranging for a smoking area outside premises. Advice can be sought from the Kirklees Licensing Service who can be contacted on 01484 223470 or e-mail licensing@kirklees.gov.uk

Contact Us

If you need more information, please contact the Council's Planning and Building Control service on <http://www.kirklees.gov.uk/planning>

For general planning information and advice, and to submit planning applications on line you can also visit the Planning Portal at: <http://www.planningportal.gov.uk/england/genpub/en/1115314175501.html>