

Background

- Smoke free legislation in the Health Act 2006 comes into force England at 6am on Sunday 1 July 2007;
- Aim - to create smoke-free places and to protect workers and public from harmful effects of passive or secondary smoke;
- Requires premises to go smoke free if they are **“enclosed”** or **“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
 - hotel accommodation
 - other residential accommodation in care homes, hospices, mental health units
 - prisons for adults
- Evidence from Ireland (smoke free from March 2004) and Scotland (smoke free from March 2006) shows many licensed premises will seek to provide areas for smokers, by the provision of facilities such as smoking shelters, canopies or other covered outside areas 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

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, but please note this guidance note is not a definitive interpretation of the law;
- 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.

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 City Council as Enforcement Authority, and officers in the Council’s Public Health and Environmental Protection Division, 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;
- **“Substantially enclosed”** premises have a ceiling or roof, but any openings in the walls have a total area **which is less than half of the area of the walls**, including other structures that serve the purpose of walls and constitute the perimeter of the premises;
- When determining the area of an opening, no account can be taken of openings in which doors, windows or other fittings can be opened or shut.

- A **roof** includes any fixed or moveable structure or device that is capable of covering all or part of the premises, and includes, for example, a retractable canvas awning;
- In summary, a smoking shelter with a roof and walls where the permanent openings have a total area that is the **same or more than** the total area of walls will be classified as **“substantially enclosed”** and **will not** fall within the provisions of the health legislation as a smoking shelter;
- **Be aware:** you need to ensure that your proposed shelter is not **“substantially enclosed”** - if it is then it clearly would not comply with the smoke free regulations and you will be wasting your time and money;
- 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”**;
- You are therefore urged to take independent advice from your own legal adviser before submitting any planning application for a smoking shelter;
- Environmental Health advice will always be sought on planning applications for smoking shelters and related features.

The Need for Planning Permission

Planning permission will normally **be required** for the following operations and uses:

- Permanent external smoking shelter structures - whether freestanding or attached to existing buildings;
- Awnings / canopies / blinds attached to buildings - will almost always have a material effect on the external appearance of a building;
- Pavement and forecourt tables and chairs sited on the public highway or a private forecourt;
- 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;
- Stub-out bins on the front of premises;

Planning permission will normally **not be required** for the following operations and uses:

- Portable freestanding awnings / canopies and space heaters;
- 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.

Where there is any doubt about the need for planning permission you should check with the Council's Planning and Building Control 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 and Building Control Service.

Application forms for a certificate of lawful development, or for planning permission, can be downloaded from the Council's website, or obtained from the Planning and Building Control 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 and Building Control Services and on our website at <http://www.newcastle.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 would normally take up to 8 weeks from the time we receive a valid application. If the application has to go to Development Control Committee, this could delay a decision.

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
 - secondary smoke infiltration into adjacent residential or commercial premises
 - introduction or intensification of activity and disturbance near noise sensitive premises, particularly in the late evening
- 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 structure or 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. You can apply online through our partnership with Planning Portal; or alternatively application forms and guidance can be downloaded from the Council's website at <http://www.newcastle.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.

Contact Us

This advice note is intended as a guide to a complicated process. You can seek further information and advice from the Council's Planning and Building Control service at <http://www.newcastle.gov.uk/planning> Alternatively you can contact Planning and Building Control direct on 0191 2115654 or by emailing planning.control@newcastle.gov.uk

Should you have any queries about obtaining consent for a pavement café please phone the Traffic and Project Management Team on 0191 2118964.

You can also visit Planning Portal at:

<http://www.planningportal.gov.uk/england/genpub/en/1115314175501.html>