

Smoke free premises

Your guide to Town Planning requirements

Wigan Metropolitan Borough Council



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Smoke free premises – Your guide to Town Planning requirements

Purpose of this leaflet

From 1 July 2007, if you own or operate premises to which the public have access, it is an offence to smoke or permit smoking within your building.

This leaflet explains the Town Planning requirements which may arise in adapting your premises to meet the new law, but it does not provide a legal interpretation of the smoke free regulations. If you are unsure of any aspect of those regulations you should seek legal advice from your own solicitor.

We expect this leaflet to be useful to people who run public houses, hotels, restaurants, clubs, offices, shops, schools, health facilities and any other building where people are employed.

What do you need to do?

You will need to decide whether you are going to provide facilities for people to smoke at your premises. In making that decision you should be aware that smoking is prohibited in wholly or substantially enclosed premises.

Enclosed or substantially enclosed premises

Section 2 of the Health Act 2006 sets out that premises that are open to the public, or are used as a place of work by more than one person or where members of the public might attend to receive or provide goods or services, must be smoke free in areas that are enclosed or substantially enclosed.

Premises are considered to be enclosed if they have a ceiling or roof and, except for doors, windows or passageways, are wholly enclosed, whether on a permanent or temporary basis.

Premises are considered to be substantially enclosed if they have a ceiling or roof but there are permanent openings in the walls which are less than half of the total areas of walls. When determining the area of an opening, no account can be taken of openings in which doors, windows or other fittings that can be opened or shut. This is known as the 50% rule.

Therefore, any structure designed to be used for smoking must have at least 50% of its sides completely and permanently open.

A roof includes any fixed or movable structures, such as canvas awnings. Tents, marquees or similar are also classed as enclosed premises if they fall within the definition.

If you decide to provide a smoking facility you may require planning permission and building regulations approval.

Do you need planning permission?

This can be a complex issue. The following will provide general guidance but if you are at all unsure you should seek advice from a planning officer (see contact list at end of leaflet) before committing to any expenditure.

Use of gardens, yards and other areas for smoking

Planning permission is not normally required to use ancillary private gardens and yards as smoking areas, provided they are lawfully part of the existing business and are not used or shared by other businesses or users. So, for example, unless specifically conditioned when permission was originally given, existing beer gardens and yards of public houses can be used for patrons to smoke without any planning permission, provided no construction works are being carried out to create a smoking area or shelter.

If you intend to use somewhere nearby that is currently used for other purposes, you are likely to need planning permission for a change of use of the land.

You should check with the Development Control Team for the appropriate area (see contact list at the end of this leaflet) whether planning permission is required for the use of land in this way.

Decking

Timber decking will normally require planning permission because it is a permanent structure.

Additional entrance doors

New entrance doors in public houses and other buildings to provide access to smoking facilities in an outside area will normally require planning permission.

Smoking shelters, canopies, awnings and jumbrellas (large umbrellas)

All these types of structure will require planning permission if they are fixed permanently into the ground.

Tables and chairs

The use of a forecourt of a public house or similar premises by the placing of chairs and other non-fixed structures will not usually amount to development requiring planning permission. But if you wish to place tables and chairs on the highway (that is, on a pavement or road) you will require planning permission. You will also require permission from the council as highway authority and this is unlikely to be granted under current highway policies.

How we make decisions on planning applications

Planning decisions should be taken in accordance with the Development Plan unless material consideration indicates otherwise. This means that your planning application will be assessed against the policies set out in the Unitary Development Plan (UDP) which was adopted in April 2006. The plan is available on our website at www.wigan.gov.uk. We have thought about how the policies in the plan can impact on the provision of smoking facilities. We have identified a range of matters which can arise and these are set out below for your guidance. Please consider them carefully before preparing your planning application or providing a smoking facility at your premises. After each section

we have identified the relevant UDP policies and the full text of these is set out in the Appendix.

Issues to consider when providing facilities for smoking

You should design, locate and manage any smoking facilities so that:

- Pavements are not obstructed and pedestrians are not put in danger.
- No nuisance or disturbance is caused to other people.
- Structures are in keeping with the character and design of the main building (for example public house) and do not affect the visual amenity of the area.
- Litter and debris resulting from smoking (for example cigarette packets and stubs) can be safely collected and disposed of.

Here are some suggestions of how you might meet these objectives.

1 Location of smoking facilities

When choosing a suitable location think about how the area will be used and who else might be affected by its use. Placing tables and chairs on a forecourt and on the pavement could result in obstruction or force pedestrians out into a busy road. There could also be nuisance to residents of adjoining businesses or dwellings particularly if your business is one which stays open late.

Smoking facilities should not be located:

- Under or near any openable windows on the same or an adjoining property.
- Near an air intake fan.
- Directly at or in front of the entry or exit doors of a building.
- Where patrons would have to pass through to get access into the premises.
- Where pedestrians or adjacent residents will be exposed to cigarette smoke.

For premises which are located in alcohol-ban areas it is important to prevent customers taking alcohol into prohibited areas such as streets.

Warning signs next to exit doors may be helpful to advise customers not to take drinks outside.

Relevant UDP policy - G1A Impact of Development on Amenity

2 Noise

Impacts on the amenity of residents will be important in determining whether planning permission is granted. A partly enclosed extension of a public house or other building that has previously not been used for a smoking area can have adverse amenity effects if placed in close proximity to neighbouring dwellings. As the new extension is only partly enclosed, new intermittent noise from the use of the extension from people using the facility could result in noise disturbance to the surrounding neighbourhood. Noise can arise from talking, shouting, mobile phones ringing, playing of music and clinking of bottles and glasses. Use of balconies or raised patios can exacerbate the effects on noise, especially in quieter areas during the late evening.

Relevant UDP policy - G1A Impact of Development on Amenity

3 **Hours of use**

Patrons and employees of premises are likely to want smoking shelters and other facilities to be available to them throughout the entire opening times of the business they will serve.

This means that for business which operate late at night such as pubs and clubs, activity associated with smoking will continue until closing times. Applicants for planning permission are advised that planning applications will be determined on this basis. Designers of smoking facilities should take this important factor into account when assessing the impact of proposals on the surrounding area and when deciding where facilities are best located.

Relevant UDP policy - G1A Impact of Development on Amenity

4 **Listed Buildings and Conservation Areas**

Many public houses and other buildings in Wigan borough are listed for their historic or architectural interest or are situated in or adjacent to a Conservation Area. To check whether this applies to your premises you should check with the Conservation Officer on 01942 404253.

The design of alterations, additions and extensions to Listed Buildings to provide covered smoking areas must demonstrate there is no adverse impact on the building's special architectural or historic interest or visual setting. Development in a Conservation Area must show that the character and appearance of the Conservation Area is preserved or enhanced.

In addition to planning permission, Listed Building Consent must be obtained for any works to a Listed Building or within its grounds.

Proposals for additions such as jumbrellas or awnings are not likely to be appropriate for Listed Buildings such as public houses or restaurants or other buildings in a Conservation Area, if they would be visually intrusive or interfere with the visual setting.

Proposals may affect trees in a Conservation Area or trees which are protected by a Tree Preservation Order. In either case additional consent may be required in addition to planning permission. The Trees and Landscape Officer should be contacted on 01942 404233 to discuss proposals affecting trees.

Relevant UDP Policies – EV4A Development and Design in Conservation Areas, EV4B Listed Buildings, EV4C Buildings of Local Interest

5 **Design of jumbrellas, parasols and awnings**

Jumbrellas, parasols and awnings provide shelter in an outdoor area such as a beer garden. They are permanent fixtures that are mounted into the ground or on buildings and often contain lighting and heating. Jumbrellas come in a range of colours, so it is important that the jumbrella blends in with the existing building and does not appear visually intrusive.

When submitting a planning application for a jumbrella, parasol or awning it is important to take the following into account:

- Does the location, design, colour, material and scale of the jumbrella, parasol or awning fit in with the visual setting of the public house or other building and the surrounding environment?
- Is the public house and other building a Listed Building or in a Conservation Area (see above for more guidance).
- Further advice on blinds and canopies and on security measures for partially enclosed structures can be found in our Supplementary Planning Document - Shop Front Design Guide, which is available on our website at www.wigan.gov.uk. Advice on the provision of railings and fencing is available in our Supplementary Planning Guidance – The Good Fencing Guide which is also on our website.

Relevant UDP policy – EV3A Design of New Development

6 Design of partly enclosed extensions

A partly enclosed extension to an existing public house or other building for the purpose of an all weather smoking area can be an attractive addition. But it is important that any extension does not have adverse visual effects on the surrounding residential area. It should be well designed and of a scale, materials and colour that complements the existing public house or other building as well as the character of the surrounding environment. New doors and other detailed changes to the main building should match existing features.

Relevant UDP policy - EV3A Design of New Development

7 Design and location of decking

Timber decking may be considered a practical way to provide a smoking facility on a sloping site. But this would not be appropriate where it would give rise to overlooking of adjacent properties or where noise or light could affect sensitive land uses such as dwellings, schools, hospitals or care homes.

Decking is unlikely to be acceptable at the front of public houses and other properties or where the decking itself is out of character with the design and appearance of the building or surrounding area. Decking should be placed far enough away from existing trees in order to avoid damaging them.

Relevant UDP policy – EV3A Design of New Development

8 Accessible buildings and sites

The council is committed to promoting an environment that is inclusive and accessible for all regardless of age or disability. Alteration of buildings and sites to provide smoking facilities should be designed to be fully accessible and should use every opportunity to improve accessibility.

Advice is provided in the council's Supplementary Planning Document – Access for All which is available on our website at www.wigan.gov.uk.

Relevant UDP policies – A1C Access for All, A1D Walking

9 **Car parking arrangements**

If provision of a new smoking facility involves removing car parking spaces or affects a servicing area there may be a reduction in car parking and servicing provision. Development adjacent to an access may have a detrimental effect upon private or pedestrian visibility. If the existing car park is at capacity or there are existing problems of on-street parking in the vicinity this may make the development unacceptable.

Relevant UDP policies – A1C Access for All, A1S Parking in New Development

10 **Building Regulations approval**

New smoking facilities are likely to require building regulations approval. The Council's Building Control service can advise if you telephone 01942 404283.

11 **Making a planning application**

To make a planning application you will need to submit:

- 4 completed copies of the full planning application forms which are obtainable from our website at www.wigan.gov.uk.
- 1 copy of a Certificate of ownership.
- 4 copies of plans showing:
 - The location of the site including adjacent property at a scale of 1:1250 or 1:2500. The site boundary must be shown by a red line.
 - The site layout plan showing site boundaries and the proposed works.
 - Floor plans and elevations.
 - Details of any seating, lighting, heating or other equipment.
 - Details of any new doors into the existing building.
 - Other features already on site such as trees, walls and fences.
 - 4 copies of a Design and Access Statement. For advice on preparing this see our Supplementary Planning Guidance – Access for All on our website at www.wigan.gov.uk.
 - The appropriate fee calculated as follows:
 - Where no floor area is created or where new gross floor space is below 40m² - the fee is £170.
 - Where gross floor area exceeds 40m² but is less than 75m² – the fee is £335.
 - Over 75m² – Please enquire on 01942 404364.

Talk to a planner

If you need to apply for planning permission, contact us to get the application forms or download them from our website at www.wigan.gov.uk. It can also be very useful to talk to a planner about what you have to do before you apply. They may be able to point out changes that could be made to improve your application and advise on whether your proposals meet the guidelines we have adopted.

Ask to speak to someone in the Development Control Section for the area where the development is located. However, the planning officer cannot guarantee the outcome of your application as it is the Planning Committee who makes the final decision on applications they consider.

Please remember however that professional planning staff may not always be available and you should make an appointment if you want an officer's advice on a specific matter.

There are four Development Control Teams covering the following areas:

West

Ince, Marsh Green, Kitt Green,
Orrell, Billinge, Winstanley,
Ashton-in-Makerfield and Bryn
Telephone 01942 404272

Shevington, Standish, Aspull,
Wigan Town Centre, Whelley,
Springfield
Telephone 01942 488045

Trees and Landscape Officer for whole borough
Telephone 01942 404233

East

Hindley, Abram, Platt Bridge,
Bickershaw, Atherton, Tyldesley
and Astley
Telephone 01942 404261

Leigh, Golborne and Lowton
Telephone 01942 404264

Relevant Wigan Unitary Development Plan Policies

EV3A Design of New Development

All proposals for development will be required, through their design, to promote where relevant:-

- (a) the character and identity of places through responding to and reinforcing locally distinctive patterns of development, spaces, natural topography, landscape and materials;**
- (b) the continuity of street frontages and the enclosure of space by development which clearly defines private and public areas and takes into account the microclimatic conditions;**
- (c) public spaces and routes that are attractive, safe, visually and physically uncluttered and function effectively for all in society;**
- (d) an environment that is inclusive and accessible for all, making places that connect physically and visually with each other and are easy to move through, putting people before traffic;**
- (e) legibility through development that provides recognisable routes, intersections and protects and enhances both local and strategic views of landmarks and focal points in order to help people 'visually navigate';**
- (f) adaptability through development that can respond to changing social, technological and economic conditions;**
- (g) diversity and choice through a mix of compatible developments and uses that work together to create viable places that respond to local needs;**

- (h) appropriate scale of development that reflects and enhances the buildings and roofs, scale, massing, heights and densities that are specific to that locality and which take into consideration the human scale relationship with the buildings themselves;**
- (i) sustainability principles including, wherever possible, reducing the impacts on climate change; the efficient use of energy and water; the use of sustainable drainage systems wherever possible, innovation in building design; reducing the use of primary minerals; and reusing and recycling buildings and materials.**

EV4A Development and Design in Conservation Areas

In addition to other development and design policies which apply throughout the Borough, the following considerations will be applied within Conservation Areas and their settings:-

- (a) The Council will ensure that any proposal for development within a Conservation Area will preserve or enhance and will not harm the character or appearance of that area;**
- (b) The demolition or inappropriate alteration of buildings which make a positive contribution to the historical, architectural or industrial archaeological character or appearance of a Conservation Area will not be permitted;**
- (c) Consent for demolition will only be granted subject to the building not being demolished before a contract for carrying out the redevelopment of the site to a high standard of design is made for which planning permission has been granted or some other legally binding commitment has been made;**
- (d) Proposals which include the demolition of significant features including porches, chimneys and boundary walls/railings or which remove or alter architectural features of value will not be permitted. The retention or, where features are missing, restoration or where inappropriate forms or features are present, the remodelling of the external character of buildings, particularly with regard to windows, roofs, materials and advertising will be required;**
- (e) Signs should preserve or enhance the character or appearance of the Conservation Area and its setting and will be permitted provided they meet the following criteria:-**
 - (i) Fascia signs should, particularly in terms of their size, proportions, degree of projection, positioning, materials, type of construction, colour and the style and size of lettering, be in keeping with the character of the shop front, fascia details and materials, the building as a whole and the area. If they are to be illuminated they should be externally illuminated using unobtrusive and discreet light fittings or take the form of individually illuminated and individually affixed letters;**
 - (ii) The cumulative impact of advertisements should not detract from the character or appearance of the building or locality. Advertisement structures should not be superimposed on other advertisement structures;**
 - (iii) Projecting or hanging signs should be of small size, thin section and if illuminated, should be discreetly externally illuminated and located at fascia level;**

- (f) The Council will encourage the preservation and, where necessary, the sensitive relocation of attractive items of street furniture and will encourage the preservation and, where possible, the enhancement and extension of stone sett and flag surfaces. Where works are undertaken to these and other special surfaces, such as paviers, temporary or permanent reinstatement should be in the original material;**
- (g) The Council will encourage the removal of buildings detrimental to the character of Conservation Areas;**
- (h) The rendering or cladding of stone and brick buildings will not be permitted.**
- (i) Proposals which involve development, including relatively large-scale extensions, within the grounds/gardens of dwellings and other buildings such as churches where the grounds contribute to the character of the Conservation Area will not be allowed.**

EV4C Buildings and Structures of Local Architectural or Historic Interest

The Council will encourage the protection and enhancement of buildings and structures of local architectural or historic interest and their settings. Development schemes including alterations, changes of use and advertisements will be expected, wherever practicable, to respect their character and retain or restore their original or historic features, materials and form.

A1C Access for All

New development and transport proposals will be required to make provision for safe, clearly defined and convenient access for all potential users, regardless of disability, age and gender to ensure the highest standards of accessibility and inclusion in all development proposals.

Where off-site provision for people with disabilities is inadequate, a legal agreement will be sought to secure the developer's contribution to the works needed to improve accessibility. This will be relative to the scale and type of the development and the relevant characteristics of the local environment.

A1D Walking

The Council will implement measures to make the walking environment more accessible, attractive, convenient and safe.

Development will be required to make provision for an accessible, attractive, convenient and safe walking environment, both within the development and between it and nearby important facilities and public transport connections.

Where off-site access for pedestrians is inadequate, a legal agreement will be sought to secure the developer's contribution to the works needed to improve accessibility. This will be relative to the scale and type of the development and the relevant characteristics of the local highway network.

G1A Impact of Development on Amenity

The impact of all types of new development, changes of use and extensions on nearby sites and buildings will be carefully considered and will only be permitted where the following circumstances apply:-

- (a) There would be no significant adverse impact on the amenity of nearby existing or proposed land uses by virtue of noise, smell, fumes, light spillage, traffic or on-street parking, visual intrusion or other nuisance;**
- (b) A change of use is the only way of ensuring that a building of architectural or historic interest or local interest can be retained or renovated. In this circumstance, (a) should also be satisfied to an acceptable degree.**