

Guidance on locating and building a smoking area/shelter



Scope of the Smokefree (Premises & Enforcement) Regulations 2006

Nearly all public places and work places that are enclosed or substantially enclosed must be smoke free.

Definition of “enclosed premises”

Premises will be considered to be “enclosed” if they have a ceiling or roof, and except for doors, windows or passage ways are wholly enclosed, whether on a **permanent or temporary** basis.

Definition of ‘substantially enclosed’

Premises will be 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 wall area, including other structures that serve the purpose of walls and constitute the perimeter of the premises. When working out the area of an opening, no account can be taken of openings in which doors, windows or other fittings can be opened or shut.

This is known as the 50% rule.

Put simply,

- If an area has no roof, smoking will be permitted within it and no further calculations will be needed; provided that adjoining walls, structures etc. do not restrict air movement.
- If 50% of the walls or more are missing then it is legal to smoke in the area
- If more than 50% of the walls are present then it is illegal to smoke in the area.

It should be noted that any shelter which is ‘substantially enclosed’ will be required to be smokefree in accordance with the Health Act 2006 and the Smoke-free (Premises and Enforcement) Regulations 2006.

What to consider when locating a smoking area/shelter for customers or employees.

It is very important to get the location of a proposed smoking shelter right at the planning stage, as putting right any mistakes may be costly.

The location of a smoking shelter may have an effect on adjoining properties and uses (this includes commercial premises as well as dwellings); the character and appearance of an area and the architectural merits of a building.

Due to the number of issues involved in considering any application, and in order to save time and expense for all concerned, Council officers welcome discussion of any proposals for smoking shelters before they are submitted.

➤ Planning

Most smoking shelters and similar structures, including decking areas and raised patio areas, will require planning permission and sometimes approval under the Building Regulations, as well as needing to comply with the Smoke Free Regulations.

➤ Location

Smoking shelters should not be sited too close to sheltering walls or other structures which may prevent proper air-flow through the shelter, and may effectively render the structure as 'substantially enclosed'. It is recommended that the smoking shelter is sited at least 1.5 metres away from any sheltering walls or other structures.

Smoking shelters should be sited to ensure, as far as possible, that second hand smoke will not be likely to infiltrate into smokefree areas of buildings and give rise to complaints. Shelters should not be located:-

- under or near any openable windows of the same or adjoining property;
- under or near any air intake systems of the same or adjoining property;
- directly at or in front of the entry and/or exits doors to any premises.

Avoid problems with neighbours and licensing issues by taking into account the following advice:

- Smoking shelters should be placed away from housing and if possible with some form of barrier (e.g. wall, vegetation etc.) between customers and residents to help mitigate the noise.

- Speak to your neighbours, advise what you plan to do and request their suggestions
- Look through your license carefully and check what you are licensed to do, do you require a variation?
- Display posters asking for noise to be kept to a minimum in external areas
- Speak to your customers and advise them that they need to keep noise to a minimum in external areas, and the reason why.
- Ensure smoking shelters are secure to avoid misuse by customers or passers-by after the premises closes.

➤ **Licencing considerations**

Licence holders who are intending to build smoking shelters on licensed premises for customers and staff should be aware of any restriction within their licence, particularly involving outside areas.

Premises Licence holders should look carefully through their licence as some premises in Wigan have conditions relating to usage of beer gardens and external areas. These conditions have to be taken into account when designing and installing smoking shelters.

Conditions have been put on the majority of licensed premises with external drinking areas to prevent public nuisance. Late at night background noise levels are low, meaning that noise is noticeable over greater distances and can be more of a concern. People drinking in a beer garden rarely causes a nuisance to adjoining premises but during more sensitive periods at night, for example, when neighbours may be trying to sleep, complaints of noise nuisance and disturbance could be received.

➤ **Premises Licence Variation**

If you do want customers to be able to drink and smoke outside your premises after the times stated in conditions on your licence then you will need to apply to the Council for a variation of the premises licence.

If you apply for a licence to allow drinking outside until late in the evening or early in the morning, you may receive objections from residents and from responsible authorities such as Environmental Health and the Police which may result the matter being referred to the Licensing Committee for consideration.

➤ **Nuisance and Anti-Social Behaviour Considerations**

Where possible, smoking shelters should be sited away from private housing where smoke and noise may become an environmental issue. Any public nuisance caused by customers in a beer garden or other external area of a licensed premises is the responsibility of the Premises Licence Holder or Designated Premises Supervisor.

It is the responsibility of the staff at the business to ensure that noise from all external areas is kept to a minimum.

Residents have the ability to call for a “Review” of Licensing conditions if they are affected by any of the Licensing Objectives below:-

- Prevention of Public Nuisance.
- Prevention of Crime and Disorder.
- Prevention of Children from Harm.
- Public Safety.

This could include noise from an outside smoking shelter, smoking area, beer garden or other external area whether alcohol is being consumed or not. A review could lead to stricter conditions, removal of a Premises Licence Holder or Designated Premises Supervisor or ultimately a revocation of a licence.

Ashtrays

All smoking shelters must be provided with metal (or other fire retardant material) ashtrays suitable for outdoor use, that is made from non-perishable metal.

Fire Extinguishers

It is recommended that at least one, two litre water fire extinguisher should be placed as close as possible to the nearest door/exit to the main building from the smoking shelter.