Trafford Council

Smoking Shelter Guidelines
Acknowledgements

Most of the information contained in these guidelines has been developed by Ellesmere Port and Neston City Council, Rushcliffe Council, Leicester City Council and Gateshead Council and are reproduced here with their knowledge. Information has also been provided by the Planning Officers Society. Pictures of different types of shelters/enclosures have been reproduced here from various commercial websites but this should not be taken as an endorsement of any particular type or make.
LEGAL CONSIDERATIONS

Introduction

Trafford Council wants to see local businesses thrive during the introduction of smoke free legislation, as has been the case in Ireland and Scotland. That means avoiding unnecessary costs from poor planning and design of workplace smoking shelters.

If you are considering putting up a smoking shelter we advise you to contact us before you take any action to ensure that the shelter meets with building, health and safety, environmental and planning legislation.

This document outlines the key principles set by the Council when granting planning permission to businesses wishing to put up smoking shelters, plus building regulations, to assist design and management. Officers from the Council will happily discuss any plans before you submit them. A list of contact names and numbers is included at the end of this guidance to help you.

Scope and Legislation Definition

Under the new Smokefree (Premises & Enforcement) Regulations 2006 nearly all public places and work places that are enclosed or substantially enclosed must be smokefree from the 1st July 2007.

Definition of “enclosed premises” is as follows: -

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 is as follows: -

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.

Definition of partially enclosed is:

Premises will be considered to be partially enclosed if they have a ceiling or roof, but there are openings in the walls which are more than half of the total wall area, including other structures that serve the purpose of walls and make up 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.
Therefore 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.

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.

**LOCATION CONSIDERATIONS**

This is probably the most sensitive issue. Where the shelter is sited will have an effect on adjoining properties and uses (this includes commercial premises as well as dwellings). The location will also have a potential effect on the character and appearance of an area and the architectural merits of a building.

Location of the proposed smoking shelter is extremely important to get right at the planning stage, as putting right any mistakes will be costly.

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, therefore, that the smoking shelter is sited at least 1.5 metres away from any sheltering walls or other structure.

Smoking shelters should also be sited so as to ensure, as far as possible, that secondhand smoke will not be likely to infiltrate into smokefree areas of premises and give rise to complaints. Smoking 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.

To minimise the risk of secondary smoke infiltrating into smokefree premises, it is recommended that the smoking shelter is sited at least 1.5 metres away from any openable windows, openable doors and air intake systems.

To avoid problems with neighbours and licensing issues please take into account the following advice:

- Smoking shelters should be placed away from housing and if possible with some form of insulation (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 advise them of the reason why.

• Ensure smoking shelters are secure to avoid misuse by customers or passers by after the premises is closed.

LICENSING 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.

It is strongly advised that Premises Licence holders look carefully through their licence as some premises in Trafford 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 such as these 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.

Please be advised that by applying 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.

For further advice on these issues please contact the Licensing Team on 0161 912 4144/4047 or email licensing@trafford.gov.uk.

NUISANCE AND ANTISOCIAL BEHAVIOUR CONSIDERATIONS

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

It is the responsibility of the staff at the premises to ensure that noise from all external areas is kept to a minimum. It is recommended that notices or posters should be displayed to ask customers to keep noise to a minimum.

Please be aware that the Licensing Act 2003 has brought in new powers for Enforcement Bodies and residents to have a say in how licensed premises operate. Residents now 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.
Think about how people will enter and leave the smoking shelter. For safety reasons, people should not have to reach it by crossing a road, car park or delivery bay. Where this isn't possible, accident prevention measures must be put into place. Examples include:

- Barrired walkways
- One way system
- Personal protective equipment (for employees only)
- Hatched out flooring

Also, the use of shelters will increase the amount of times external doors are used to access/egress these areas. This may lead to noise nuisance issues with adjoining premises and also smoke ingressing back into the building. This can avoided by the provision of an acoustic/ventilated lobby. This can be achieved by providing two sets of doors that are off-set, for any external doors predominantly used as an entrance or egress to smoking areas. These doors should be fitted with self-closures.

**Antisocial Behaviour**

Licensed premises often attract youths during evening periods. Try to ensure that smoking shelters are monitored, covered by CCTV or secure to ensure that youths do not congregate in these areas during or after operational hours (see security section).

**Recommendations on location of shelters**
It is recommended that all shelters should be faced inwards to reduce noise. It is also recommended that any edges of the smoking shelter should be at least 1.5 metres away from any enclosed structure, such as walls or hedges. Please see the example opposite.

Security and Lighting

Pay attention to lighting to and inside the shelter, especially if it will be used at night to allow safe access to the shelter. Lighting can also be a statutory nuisance. You should also think about the direction of lighting and where possible face it away from any private housing. A suitable example is shown opposite.

LITTER AND WASTE

a) On or inside Premises

The Workplace (Health, Safety and Welfare) Regulations 1992 requires every workplace shall be kept sufficiently clean and ensure that waste materials are not allowed to accumulate.
b) Outside premises/Public Highway

The Environmental Protection Act 1990 (introduced by section 27 of the Clean Neighbourhood and Environment Act 2005), now makes it clear that the term litter specifically includes smoking-related litter such as cigarette ends, cigars and like products. The offence of leaving litter could result in a £50 fixed penalty notice being issued. Duty holders should display signs stating this and asking people to use the ashtrays provided. This will not only benefit the individuals who may be unaware of the offence but also the duty holder who will have to clear up less cigarette ends.

c) Litter Clearance Notices.

In addition, litter created by employees and visitors around business premises, including discarded cigarette ends, is the responsibility of businesses to clean up. Street Litter Control Notices include all types of eating and drinking venues and office buildings. Local authorities have the power to require the occupiers or owners to clear up litter in the immediate area of their premises, including that created by their employees and customers, or risk a fixed penalty notice of up to £110.

SAFETY CONSIDERATIONS

For all smoking shelters you must consider the safety of its users and also any property kept inside. The personal safety of the shelter’s users is paramount and must be considered through all aspects of design, construction and maintenance. Where possible the shelter should be in sight of staff for example close to an (unopened) window. Consider CCTV to be able to record any criminal activities as evidence. If CCTV is installed in these areas the appropriate signs should be displayed. It should be noted that CCTV cameras may themselves require planning permission.

The use of the structure should be adequately controlled from any licensed premises during opening hours; its misuse after opening hours should be sufficiently controlled to avoid nuisance to nearby properties.

Duty holders must consider the likelihood of children and young adults congregating in the areas and put measures in place to prevent this from happening, particularly out of hours. These would include building the shelter from shatter proof glass and to avoid seating. If it is reasonably foreseeable that children and young adults will try to use these areas, duty holders must try to make the shelter unattractive to them.

Heath and Safety

In licensed premises it is advisable that you have a no glass policy for external smoking shelters in order to prevent glasses from breaking and causing a hazard. If you cannot have a ‘no glass’ policy you must have a glass collection policy, which clearly states who is responsible for collecting the glasses and how often they are to be collected. It is advisable to train all of the staff to look out for broken glass and to clear it away in a safe manner as soon as possible.

Ashtray
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.

Free standing ashtrays (such as floor ash bins or ash and general rubbish bins) will only be allowed if they are fixed to either the floor or the shelter’s structure itself and if there is no alternative.

Good examples of ashtrays appropriate for a smoking shelter are shown here. They are metal in construction and their design restricts oxygen flow and so discourages fires.

**Heating/Lighting**

If you wish to provide heating to a smoking shelter you must fully consider all the health and safety implications.

Where possible you must provide permanently fixed radiant heaters positioned so that they can not be tampered with or pose a burning danger to those within the shelter. It would be preferable that the heating levels can be altered (by trained employees only), so a suitable temperature can be reached.

Where possible it is advised that gas heaters should not be used, as these can be easily tampered with and pose an additional fire hazard due to the gas cylinder supply. However, where there is no other option the duty holder must complete a risk assessment in accordance with current legal requirements.

**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.

**Material/Fabric**

Where possible a shelter should be made from coated metal to prevent fire and be weather resistant. Plastic should be avoided, but where its use is unavoidable it should be fire resistant.

Additionally wood should be avoided, but where wood is necessary to the design, such as for decked smoking areas, all precautions must be taken to avoid the risk of fire through a build up of waste. Therefore any raised decking area must be fully enclosed, with access underneath to ensure any waste can be cleared regularly.
The decking should be installed to avoid gaps between the flooring board to prevent unextinguished ‘butts’ falling below. The decking in the example below would **not** be suitable as butts could fall through the gaps.

A satisfactory example of decking is illustrated below:

Where possible walls should be made from shatter proof glass, so it is possible to see into the shelter (to avoid any unwanted, illegal activities taking place).
Car parking areas may create blind areas close to shelters and so should be avoided.

**Means of Escape**

There must be adequate means of escape from the shelter which does not entail having to re-enter the premises by one room only, unless the premises are provided with automatic smoke detection in the room giving access to the shelter and the fire alarm within the building can be clearly heard within the shelter and the travel distance is no greater than 18m from the furthest point within the shelter to a final exit door from the main premises.

If this is not the case then it must be possible to enter the building via two entry points which are suitably separated by fire resisting construction and any fire alarm provided within the main building can be heard within the shelter.

If there is no fire alarm within the building then the responsible person must carry out a fire risk assessment in accordance with the Regulatory Reform (Fire Safety) Order 2005 to assess the risks from fire, the outcomes of which must be acceptable to the enforcing authority for fire regulations.
EQUAL ACCESS CONSIDERATIONS

Disability Discrimination Act

The smoking shelter must be suitable for everyone to use. The design must consider wheelchair users and therefore have safe access. It must also consider visual and hearing impairments, and consider the following: -

- Any steps must have their edges highlighted with paint
- Safety and information signs should be in large print or braille (where possible)
- Signs must be positioned where everyone can notice them.

Examples: -

This would not be a suitable smoking shelter as it does not allow access for wheelchairs.

However a suitable example would be: -
PLANNING & BUILDING CONTROL CONSIDERATIONS

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 (see below), as well as needing to comply with the Smoke Free Premises Regulations 2006. Due to the number of issues involved in considering any application, and in order to save time and expense for all concerned, Council officers would welcome discussion of any proposals before they are submitted (see Further Information below).

The duty holder must consider if the proposed site will be visible to the street scene and how it relates to the design of the building that it is attached to and those nearby. Think about the activities and behaviour of the shelter’s users being seen from other properties. [Planning Control can provide assistance – see information below]

Pre-application advice is encouraged and planning advice and permission can be sought through Trafford Councils Planning Control Section using the following link:- http://www.trafford.gov.uk/EnvironmentAndPlanning/Planning

When considering applications the planners will consider amongst other things: the location; the design and materials to be used, the compatibility with the existing building and the impact on the street scene and character of the area, visual intrusion, loss of outlook, loss of privacy, light pollution, noise and disturbance arising from the use of the shelter, the siting of adjacent doors/windows/air intake systems etc, secondary smoke infiltration into adjacent properties, and loss of parking/turning/servicing areas.

It will be the responsibility of the applicant to ensure that any proposed smoking shelter/area meets the requirements of the Smokefree Regulations. Any amendments required to a scheme already granted planning permission in order to meet these Regulations is likely to result in the need for a fresh planning application.

Building Control

In certain circumstances the Building Regulations 2000 (as amended) may apply. Exemptions to this are defined in Regulation 9 – Schedule 2 Exempt Buildings and Work.

'Where an extension is exempt under these provisions, the structure itself may adversely affect the existing building e.g. disabled access, means of escape in case of fire, ventilation and other aspects of the Regulations. Therefore, in certain circumstances it may be necessary to apply for Building Regulation consent for these alterations.

The relevant exemption classifications that smoking shelters could fall under is:

CLASS VI: Small detached buildings

1. A detached single storey building, having a floor area which does not exceed 30m², which contains no sleeping accommodation and is a building that:
   (a) Has no point which is less than one metre from the boundary of its curtilage; or
(b) Is constructed substantially of non-combustible material.

2. A detached building, having a floor area not exceeding 15m² and which contains no sleeping accommodation.

**CLASS VII: Extensions**

The extension of a building by the addition at ground level of:
(a) Any ‘partially enclosed’ conservatory, porch, covered yard or covered way; or
(b) A carport open on at least two sides;

Where the 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 of Schedule 1.

Where a shelter falls outside the above classifications, a Building Regulations application must be submitted.

**Construction**

Under the Construction (Design and Management) Regulations 2007 a construction project is notifiable if the construction phase is likely to involve more than (a) 30 days; or (b) 500 person days.

If the construction of a smoking shelter falls under this category the CDM co-ordinator must notify the Health and Safety Executive immediately on 0845 3450055.

**Assessment of Compliance**

The 50% ‘open’ rule will be calculated based on the area of open spaces within the planned shelter, including all lattice and trellis work. Consideration will be paid to any future changes to the shelter such as plants that grow up any trellis, thus reducing the open spaces. All of the above should be considered for safety and compliance.

**OTHER CONSIDERATIONS**

We recommend duty holders assess all the economic risks involved in putting up, running and maintaining the shelter. Examples are listed below:-

- Cost of lighting/heating – think about installing dimmer lights and thermostatically controlled heating.

- Planning/Building Control permission.

- Closure for construction.

- Extra insurance.
• Any licence changes needed.

• Maintenance, for example cleaning glass roofs, vandalism etc.

• Keeping the shelter free of litter and preventing littering to the surrounding area.

Maintenance

All shelters should be adequately maintained and cleaned to make sure they are safe and hygienic.

CONSTRUCTION CONSIDERATIONS

Acceptable Designs

Unacceptable Designs
FURTHER INFORMATION
Smoke Free Legislation Information
Website: http://www.smokefreeengland.co.uk/
Tel: 0800 169 1697

Useful Contacts  at Trafford Metropolitan Borough Council

Planning Control:
Tel: 0161 912 3149
Email: development.control@trafford.gov.uk
Fax: 0161 912 3128

Building Control: Stuart Beesley
Tel. 0161 912 3111
Email: stuart.beesley@trafford.gov.uk
Fax: 0161 912 3179

Noise and Lighting: Bill Potter
Tel: 0161 912 4568
Email: bill.potter@trafford.gov.uk
Fax: 0161 912 1113

Licensing Section : Michael Bridge
Tel: 0161 912 4129
Email: michael.bridge@trafford.gov.uk
Fax: 0161 912 4241

Litter: - Trafford Direct
Tel: 0161 912 2000
Email: trafford.direct@trafford.gov.uk
Fax: 0161 912 2102

Environmental Health Team: Advice on compliance with smokefree legislation
Tel: 0161 912 4916/4918
Email: smokefree@trafford.gov.uk
Fax: 0161 912 1113
We stress that if you are considering having a smoking shelter you should contact the appropriate officers for advice as soon as possible.
APPENDIX 1 – SMOKING SHELTER CALCULATIONS

Enclosed/Open Calculation

The calculation to establish if an area is open enough to allow smoking is as follows:

Measure the whole of the perimeter, excluding the roof and floor (that is, work out the TOTAL area of the four walls).

Measure the TOTAL area of ALL ENCLOSED PARTS of the four walls (again, exclude the roof and floor)

To determine whether smoking will be permitted within this structure the percentage of ENCLOSED (E) over TOTAL (T) perimeter areas must be calculated as shown below:

\[
\frac{E}{T} \times 100 = \% \text{ Enclosed}
\]

If the percentage calculated is MORE THAN 50% then smoking WILL NOT be permitted.

For the purposes of all of the above calculations, any openings (such as doors and windows), that can be opened or shut, are considered to be enclosed areas.

We suggest that you stick strictly to this guidance to make sure the shelter you are planning fully meets with this new law.

To help you a number of worked examples are given below.
EXAMPLE ONE
17 \times 100 = 62.9\% \text{ Enclosed} - \textbf{NOT ACCEPTABLE}

\[ \begin{array}{|c|c|c|}
\hline
\text{Area} & \text{Dimensions} & \text{Area} \\
\hline
\text{A} & 3 \text{m} \times 1 \text{m} & 3 \text{m}^2 \\
\text{B} & 3 \text{m} \times 3 \text{m} & 9 \text{m}^2 \\
\text{C} & 3 \text{m} \times 1 \text{m} & 3 \text{m}^2 \\
\text{D} & 1 \text{m} \times 1 \text{m} & 1 \text{m}^2 \\
\text{E} & 1 \text{m} \times 1 \text{m} & 1 \text{m}^2 \\
\hline
\end{array} \]

Enclosed area = 17 m\(^2\) Area of perimeter = 24 m\(^2\)

Sides x 2 = 1m x 3m x 2 = 6m\(^2\)
Front & back 3m x 3m x 2 = 18m\(^2\)
EXAMPLE TWO

Enclosed area

Area A  3m  x  3m  =  9 m²
Area B  1m  x  1m  =  1 m²
Area C  1m  x  1m  =  1 m²
Area D  1m  x  1m  =  1 m²
Area F  1m  x  1m  =  1 m²

Enclosed area = 13 m²

Area of perimeter

Sides x 2 = 1m x 3m x 2 = 6 m²
Front & back 3m x 3m x 2 = 18 m²

Area of perimeter = 24 m²

13 x 100 = 61.9% Enclosed – NOT ACCEPTABLE

\[ \frac{13}{24} \]
EXAMPLE THREE

Enclosed area

Area A \[3m \times 3m = 9 \, m^2\]

Enclosed area = 9 \, m^2

Area of perimeter

Sides x 2 = 1m \times 3m \times 2 = 6 \, m^2

Front & back \[3m \times 3m \times 2 = 18 \, m^2\]

Area of perimeter = 24 \, m^2
9 \times 100 = 37.5\% \text{ Enclosed } \text{ACCEPTABLE}