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01727 819344 or 819345



The District Council Offices textphone number is **01727 819570**. The service is for customers with a hearing impairment.

এই লিফলেটে যে তথ্য দেওয়া হয়েছে যদি আপনি আরও বুঝার সাহায্য চান তবে কোন্ করুন Telephone: 01727 866100

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Planning Advisory Leaflet



GOING SMOKE-FREE: A PLANNING GUIDE TO SMOKING SHELTERS

Introduction

Smoke-free legislation in the Health Act 2006 came into force in England on 1 July 2007. The aim of the legislation is to create smoke-free places in order to protect workers and the general public from the harmful effects of passive or secondary smoking.

The Act introduces a statutory smoking ban in what are defined as **'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 or substantially enclosed workplaces, and public transport.

There are some exemptions, which include:

- private accommodation but not common parts, for example staircases and lifts;
- hotel accommodation;
- other residential accommodation in care homes, hospices, mental health units;
- adult prisons.

Evidence from Ireland and Scotland, where bans have been in existence since March 2004 and March 2006 respectively, indicates that many licensed premises will seek to provide areas for smokers, by providing facilities such as smoking shelters, canopies or other covered outside areas, which, when combined with the use of outdoor space heaters, enables them to be used in most weathers. These structures have some form of roof and a combination of walls and openings to comply with the provisions of the Health Act.

This planning advisory leaflet is intended to provide planning guidance on the provision of facilities for smokers in order to comply with the new health legislation. However, please note that this guidance is not a definitive interpretation of the law. It has been produced to offer advice and assistance on the need for planning

permission and the factors that will be taken into account in deciding whether or not such permission will be granted.

What are 'enclosed' and 'substantially enclosed' premises?

Whether a proposed smoking shelter or related structure complies with the relevant health legislation is not a planning judgement. This is a matter for the Council as the Environmental Health Authority, which will be responsible for enforcing the legislation. However, it is necessary to understand fully the meaning of these two 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 that 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 should be taken of openings where 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 less 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.

Please note: you must 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 the 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 should always be sought on planning applications for smoking shelters and related features.

When is planning permission required?

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

- permanent external smoking shelter structures, whether free-standing or attached to existing buildings;
- awnings, canopies or blinds attached to buildings, as these 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;
- the 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 free-standing awnings or canopies and space heaters;
- the use of beer gardens and yards where these are ancillary to the main pub or 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 Department before proceeding. However, the Council is only able to offer informal advice without receiving an application. Should you wish to have formal confirmation that a structure or use does not require planning permission, you may apply for a Lawful Development (proposed) Certificate.

Application forms for either a Lawful Development Certificate or for planning permission, can be downloaded from the Council's website, or obtained from the Customer Service Centre at the Council offices. A fee is payable for both, details of which are available from the website.

Detailed guidance on the submission of applications is available from the Planning Department (01727 819344 or 819345) and on the Council's website (www.stalbans.gov.uk). 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 will normally take up to eight weeks from receipt of a valid application. Should the application go to a Planning Committee, it may take longer for a decision to be made.

Material considerations for planning applications

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;
- protects the safety and free flow of pavement users;
- has no detrimental impact on the amenity of neighbouring residents.

In particular, the following points will be considered:

- 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 or siting of the shelter or 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 or 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 or awning result in loss of parking spaces, with the associated impact on parking problems in the vicinity?
- Will the shelter or 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 is 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 these are 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 Council's website (www.stalbans.gov.uk).

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

- highway safety – for example, would the sign cause obstruction to pedestrians or traffic?

- amenity – would the sign be visually obtrusive (particularly in a conservation area, or on a listed building) or add to advertisement clutter?

Further information

This advisory leaflet is intended to be a helpful and useful source of information and not binding on any party. The Council offers no guarantee or warranties concerning the accuracy of the information supplied.

For more information about the contents of this leaflet contact:

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