



Smoking Areas

your guide to planning requirements





I. Introduction

This guidance note provides information regarding the Planning requirements for the development of land for the purpose of a covered/smoking area. The guidance also summarises the implications that a smoking / covered outdoor area may have for the Health Act 2006 Amendment, which came into effect on July 1st 2007, to enforce smoking bans throughout England.

It is not a legal requirement to erect a structure to cater for the smoking ban regulations, however should you wish to erect such a structure, the information contained within this guidance note will provide advice to those considering

ways of providing facilities for smokers. It should be noted that the advice and guidance given is solely to provide guidance in so far as it relates to the needs for planning permission and factors to be taken into account in deciding whether or not to grant planning permission.

It should also be noted that separate permission and advice from the Council's Environmental Services Team is required to enable a covered area to be used as a smoking area. A comprehensive interpretation of the Health Act 2006 should be gained from discussions with Council's Environmental Services Team.

2. Enclosed and 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 are to be smoke free in areas that are enclosed or substantially enclosed. These regulations define what is meant by “enclosed” and “substantially enclosed” premises.

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

This is known as the 50% rule.

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

3. Is Planning Permission required?

Proposals to carry out works to a Public House or other buildings to provide for open sided and/or outside facilities for smoking customers or general use, you are likely to require planning permission. An assessment as to whether to grant planning permission is based initially on planning policies that are set out in the Wolverhampton Unitary Development Plan 2006 (UDP), and any other material considerations. The UDP can be viewed via the Council website at: www.wolverhampton.gov.uk/environment/planning/policy/udp

Public Houses and similar other buildings play an important role within our community. They are places for people to come together and are essential for a sustainable community. Current legislation has introduced a non-smoking environment inside our Public Houses and other premises (as defined under the Health Act 2006),

and therefore it is important that any alterations to an existing Public House or other premises for the purpose of creating a smoking area are not detrimental to the surrounding environment. As many Public Houses and other such buildings are within or next to residential areas, it is important that any additions do not have any adverse effects on these areas.

Planning Permission will be required for any physical works to the exterior of a Public House which will include the erection of smoking shelters, partly enclosed extensions, patio heaters, Jumbrellas/parasols, awnings, decking and so forth. The use of land for a beer garden or drinking terrace/patio may not always require planning permission, particularly if it is within the curtilage of the premises.

Examples of development to Public houses and similar buildings which **require permission** include:-

- Jumbrellas/Parasols that are fixed or mounted into the ground on a permanent basis;
- Any exterior extension/alteration to a building;
- The erection of any permanent free-standing structure (eg: play equipment);

- Tables or chairs that are mounted or fixed into the ground on a permanent basis;
- The permanent attachment of an awning to an existing structure;
- A free-standing awning that is not removed when not in use;
- Advertising consent will be needed for a structure that incorporates an advertisement beyond the parameters of what is permitted under the Town and Country Planning Act 1990.

Please note that the construction of a smoking shelter or equivalent needs to comply with the requirements of the Health Act 2006 and may also have implications for a Licensed Premises. You are therefore strongly advised to contact the Licensing and Support Services Section when considering an application for planning approval of such a structure, to discuss whether a variation to your existing Premises Licence is also required.

It is important to keep the following in mind when designing a scheme and submitting a planning application for any of the following alterations to a Public House or other building for the purpose of a smoking/ sheltered area:-

3.1 Jumbrellas/Parasols & Awnings

Jumbrellas or Parasols are a way of providing shelter in an outdoor area such as a beer garden. They are permanent fixtures that may be mounted into the ground and often contain lighting as well as heating. Jumbrellas, parasols and awnings come in a range of colours, so it is important that the Jumbrella blends in with the existing building and does not appear visually obtrusive. Awnings over beer gardens for the purpose of smoking areas need similar measures as indicated for Jumbrellas. Due to awnings and Jumbrellas deteriorating within a short time period, **only Temporary Planning Permission** (normally 5 years) will be granted for such structures. When submitting an application for a Jumbrella/Parasol or an awning, it is important to take the following into account-

- Does the location, design, colour, material and scale of the Jumbrella or awning respond positively to the visual setting of the Public House or other building and the surrounding Environment?
- Is the Public House or other building a listed building or in a conservation area? (see section 3.5 for more information)

3.2 Partly Enclosed Extensions

A partly enclosed extension to an existing Public House or other similar buildings for the purpose of an all weather smoking area/general use can be an attractive addition. However, it is important that any extension is well designed but also that it does not have adverse effects on the amenity of any surrounding residential areas in respect of the following:-

- **Noise**
Placing a partly enclosed extension on a façade of a Public House or other building that has previously not been used for smoking areas/general purpose, can have adverse amenity effects from noise if placed in close proximity to neighbouring dwellings. The design and siting of the extension must avoid unacceptable noise disturbance to neighbouring properties.
- **Loss of car parking and traffic demands**
The development should not result in the unacceptable loss of car park spaces, or affect a servicing area or access. For example, if the car park is at capacity, or there are existing problems of on-street parking in the vicinity, this may make the development unacceptable.

Alternatively, if the development significantly increases the patronage of the public house or other building, consideration will be given to the adequacy of the car parking/ servicing areas and surrounding highway network. Replacement parking may need to be provided. To discuss the transport implications of your proposed development, please contact the Transport Development Team.

It will often be more acceptable for a partly enclosed extension to a Public House or other such building to be placed in areas that have previously been used as part of the building, for example, an existing beer garden.

- **Design and Appearance**

Partly enclosed extensions also need to be well designed and of a scale, materials and colour that compliments the existing Public House or other building as well as blending with the character of the surrounding environment. Planning applications should also contain details of waste receptacles for patrons using the smoking areas. Extensions will also need to be able to comply with the requirements under the Council's Supplementary Planning Guidance - 'Access & Facilities for People with Disabilities.'

3.3 Tables & Chairs

The use of a forecourt of a public house or similar establishment for the siting of tables and other non-permanent structures will not usually amount to development requiring planning permission. However, where such structures are to be placed on the public highway, then a highways licence will be required from Licensing and Support Services. The Council will take into account a number of issues including the obstruction of the highway, pedestrian safety, nuisance to adjoining residents, protecting the amenity, character and appearance of an area, historic buildings, refuse, cleaning arrangements and potential intensification of the use. Detailed advice is available from the Licensing and Support Services Section.

3.4 Beer Gardens

The use of land for a beer garden or drinking terrace/patio may not always require planning permission, particularly if it is within the curtilage of the premises. Where permission is required, either for the use of the land or for any physical structures, the Council will consider carefully the possible impact on noise sensitive premises

and the visual impact of any proposal. The Council will have particular regard to the visual impact in relation to listed buildings and conservation areas which is described in more detail below.

3.5 Alterations to listed buildings or buildings within a conservation area

Many buildings within Wolverhampton are of historic or architectural interest, which may be either listed (statutory or local) or situated within or adjacent to a conservation area. Historic buildings are an irreplaceable record of the past, which must be protected for future generations. In addition to normal controls over development, the Planning (Listed Buildings and Conservation Areas) Act 1990 provides specific protection for buildings and areas of special architectural or historic interest. Applications for alterations to Public Houses or other such buildings for the purpose of providing cover for smoking or other outdoor activities, which may affect a conservation area or its setting, must demonstrate that the character or appearance of the conservation area is preserved or enhanced. Similarly, applications for alterations to Public Houses or other such buildings which are



listed buildings, must demonstrate that there is no adverse impact on the building's special architectural or historic interest or its visual setting.

Proposals for additions such as Jumbrellas/Parasols or awnings are not appropriate for listed Public Houses or other such buildings or those within a Conservation Area if they are visually obtrusive and interfere with the visual setting of the listed building or the Conservation Area.

Planning applications for partly enclosed extensions to a listed building or a building within a Conservation Area will only be permitted where it can be clearly demonstrated that the special architectural or historic interest of the listed building, including its setting or the Conservation Area, will not be adversely affected.

Note: In addition to planning permission, Listed Building Consent must be obtained from the Council for any such works to a listed building.

3.6 Facilities for people with disabilities.

Any applications for structures to be used for covered areas/smoking shelters will be required to comply with the requirements of Supplementary Planning Document: 'Access & Facilities for People with Disabilities, and relevant accessibility policies of the Wolverhampton UDP.

If the application results in a substantial increase in number of patrons, this may also result in the need for provision of additional disabled facilities, toilets or car spaces. For more assistance in these matters, please contact the Council's Access Officer.

4. Useful contact details

Access Officer:

01902 555411
planning.policy@
wolverhampton.gov.uk

Conservation:

01902 555622
conservation@
wolverhampton.gov.uk

Environmental Services:

01902 556122
Environmental.services@
wolverhampton.gov.uk

Licensing and Support

01902 555033
licensing@
wolverhampton.gov.uk

Planning Development Control:

01902 551155
development.control@
wolverhampton.gov.uk

Transportation Development:

01902 555745
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