



**DEPARTMENT OF PLANNING & ECONOMIC DEVELOPMENT
SUPPLEMENTARY PLANNING GUIDANCE ON SMOKING SHELTERS AND
AWNINGS
AUGUST 2006**



Our Scottish Borders
Your future

SHELTERS, STRUCTURES AND ALTERATIONS TO ACCOMMODATE SMOKERS OUTSIDE EXISTING PREMISES

1 INTRODUCTION

This supplementary planning guidance provides advice on how smoking structures will be assessed within the context of planning legislation, guidance and policy. For anyone proposing such a structure, early discussions are recommended with the Planning Department and other involved parties (listed below).

The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 introduces the requirement that premises or parts of premises where smoking is allowed must not be “wholly” or “substantially enclosed”.

There is no requirement under the “smoking act” for employers and publicans to provide an awning or shelter. However many businesses and employers have chosen to provide facilities for their customers and employees. A variety of structures, shelters and alterations have been presented to the planning authority for consideration in recent months. **Finding an appropriate design solution can be difficult, and may not always be possible. Solutions may be more challenging where the structure is within a conservation area or on a listed building.**

2 CONSENT REQUIREMENTS

For the avoidance of doubt, the use of ancillary land in the curtilage of a public house (such as beer gardens or yards), or a work premises, by smokers, does not constitute development in terms of the planning acts, and therefore no change of use planning application will be required. **Planning Permission will however be required for physical alterations to buildings which are not granted a specific exemption by The Town & Country Planning (General Permitted Development Order) (Scotland) 1992.** This would apply to alterations to listed buildings and to buildings located in Conservation Areas, and also to buildings not granted deemed planning permission.

Listed Building Consent may also be required where the structure or alteration relates to a Listed Building.

Advertisement Consent may be required where an awning or shelter incorporates an advertisement within its fabric or structure which is out with the scope of that permitted by the Town & Country Planning (Control of Advertisements) Regulations 1984.

Early contact with your local Planning Office is recommended to establish whether consent is required, and to gain an indication of the acceptability of a potential scheme.

You should ensure that as well as meeting planning criteria, your proposal is also in accordance with other relevant legislation. Further contact is therefore also recommended with the Environmental Health Service, and where appropriate with the Council’s Roads Officers. The granting of planning permission for a structure does not confer any other necessary consent or approval upon a structure. You should ensure that the proposal meets the requirements of The Prohibition of

Smoking in Certain Premises (Scotland) Regulations 2006, and all other relevant Licensing considerations.

3 DETERMINATION OF APPLICATIONS

Sections 25 and 37(2) of the **Town and Country Planning (Scotland) Act 1997** require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise.

Section 14(2) of the **Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997** requires that special regard shall be paid to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 64(1) requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

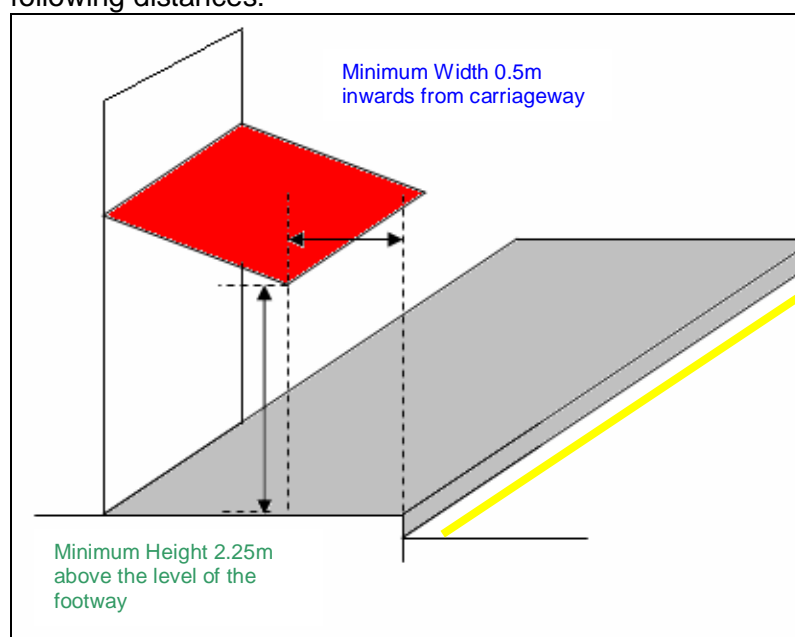
This Supplementary Planning Guidance on Smoking Shelters and Awnings is also a Material Consideration in the determination of applications. Particular reference will be made to Sections 4, 5 and 6 of this guidance when determining applications.

4 DESIGN GUIDANCE FOR DETERMINATION OF APPLICATIONS

There are a number of potential different solutions to providing external shelter. These may range from temporary to permanent, free standing to attached. The Location of proposed structures and shelter can have a significant impact upon upon the building and surroundings. In the case of a rear yard or garden, of ten such a structure can be relatively easily accommodated. Properties which have only a very limited private area or indeed no private frontage present particular challenges and it may be that in some circumstances no shelters will be permitted.

Roads Issues

The Roads (Scotland) Act 1984 specifies that it is an offence to infringe upon the following distances:



Detached free standing shelters

There may be circumstances in which such a structure is appropriate, e.g. in a rear yard or garden area. By virtue of the fact that a shelter has to be substantially open, the resultant shelter should not normally appear excessively domineering. The use of PVC panelling and framework should be avoided in Conservation Areas and Listed Building applications. Steel and Timber are generally more appropriate in such applications. Such a structure should either match the form and materials of the existing building, or be of high quality contemporary design. The location of free standing structures should respect existing building lines and should avoid obstructing pavements and routes over which the public have access.

Awnings / Blinds / Canopies

Awnings and blinds are a traditional method of providing shade on premises such as butchers in a number of Border towns and villages. Retractable awnings are common in the Scottish Borders. Fixed awnings are in general terms less common in the Borders towns. Careful attention is required on the detail of the blind box and the housing of any blind should be recessed. The canopy should be made of non reflective material, preferably canvas or a suitable modern substitute. The colour should be drawn from the pallet of traditional colours that are evident in the area and should complement the colouring of the recipient building. Such awnings located in rear areas are more likely to be viewed favourably.



Examples of a traditional awning (Left) and a suitable modern awning (right)



Parasols

Provided a parasol is a movable structure, it will be normally be exempt from the need for planning consent. However, since the introduction of the smoking legislation, a number of manufacturers have produced large scale parasols of rigid construction which require permanent footings. Structures of such a scale will require planning permission. Should such a structure be proposed, care should be taken to ensure it does not dominate its surroundings by means of excessive scale or alien materials. Their location should avoid obstructing pavements and routes over which the public have access.



Example of a parasol exempt from the need for planning permission.

Attached Cages (generally applicable in Nightclubs)

To comply with the smoking legislation several nightclubs in Edinburgh and West Lothian have formed caged secure areas, accessible only from within the nightclub. This is to allow smokers a place to legally smoke, whilst maintaining security in the premises by means of fencing round the exterior of the structure. Such applications are often over domineering to the architecture of the original building, and this approach can result in structures which detract significantly from the building to which they are attached. This type of solution is considered inappropriate for application to clubs and pubs in Conservation Areas and Listed Buildings in the Scottish Borders. Even out with sites in Conservation Areas or affecting Listed Buildings, this arrangement can be unacceptable. In one retrospective case, the Fire Officer advised a prohibition notice would be served if the use of such a structure was not discontinued.

Further Design Guidance

Historic Scotland's Memorandum of Guidance on Listed Buildings and Conservation Areas (available from www.historic-scotland.gov.uk)

5 CONSULTATION ON APPLICATIONS

The Director of Technical Services will be consulted on all applications for shelters, awnings and other structures that may affect pavements and adjacent roads, obstruct visibility or public passage, or which could have the effect of pushing passing pedestrians onto the road's edge by means of creating an obstruction to the free passage of pedestrians.

Lothian & Borders Police have an Architectural Liaison Officer whose views may be sought where considered necessary.

The Director of Technical Services (Environmental Health) will be consulted where it is considered there may be a significant increase in noise resulting from the use of the shelters.. The most likely form of noise arising from this type of development would be noise from patrons at the shelters (i.e. voices) or noise breakout from patrons entering or leaving the premises to access the shelters (i.e. amplified music / voices). Consideration should be given by applicants to the safe disposal of smoking rubbish, e.g. cigarette ends.

Noise breakout as a result of patrons entering or leaving the premises to access either the canopy or shelter should not be significantly beyond that experienced prior to the smoking ban; however, the Planning Department will consult the Environmental Health Department as deemed appropriate in the circumstances of particular cases.

The formal clearance of Historic Scotland is required for all applications relating to Category A and Category B listed Buildings. It is recommended that if your proposals relate to such a building, early contact is made with Historic Scotland to ensure the acceptability of your proposals to this Agency.

Planning Conditions may be attached to consents to cover such issues as materials, detailed plans and litter. Informative notes may also be attached to consents to clarify matters for applicants:

Model Planning Condition:

Receptacles for the purposes of containing litter will be provided adjacent to the smoking shelters for use by the patrons of the premises and be maintained in a tidy condition to the satisfaction of the planning authority. Details of the receptacles and their location shall be submitted for prior approval of the Planning Authority and shall be implemented and maintained thereafter in accordance with approved details.

Reason: In order that the general amenity of the area shall not be affected.

Model Advisory Note for the information of the Applicant:

The approval of this application does not confer any other necessary consent, nor does it mean the proposal complies with The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006. You are advised to contact the Environmental Health Section of the Council to ascertain the legitimacy of the structure for use as a smoking shelter.

6 KEY DETERMINING ISSUES

Key points applicable in the determination of applications for smoking structures and awnings/canopies etc are:

- The works should not dominate the character and appearance of the space.
- Care should be taken where there are adjacent residential properties particularly with overlooking windows.
- Overlooking of adjoining property should be avoided altogether although the use of obscured glass may be acceptable depending upon the circumstances of the site.
- Toughened glass is considered to be appropriate for use applications in Conservation Area and to Listed Buildings. Polycarbonate is not considered appropriate due to its declining appearance with age and susceptibility to damage from lit cigarettes and vandalism.
- If the property has a traditional shop/public house frontage, traditional canvas awnings with timber framing will be preferred.
- On Listed Buildings all proposals should be custom designed for the property.
- The effect of proposals on listed buildings and/or Conservation Areas will be given particular consideration. The character and appearance should be preserved. The test of 'preserve or enhance' will be applied in Conservation Areas.

- In schemes seeking consent for awnings, the material and colouring of the canopy should be sympathetic to the surroundings. Generally, the canopy should match the colouring of the frontage. The Canopy housing should generally be recessed.
- **Proposals which have a significant adverse affect Road (including pedestrian) Safety will be refused.** Care should be taken particularly in the siting of canopies and awnings over pavements to ensure that there is sufficient space left for passing pedestrians.
- Care should be taken to ensure that awnings and canopies to not obstruct street lighting or the line of sight of CCTV cameras. **Proposals significantly affecting either light-levels or CCTV coverage will be refused.**
- Proposals incorporating signage into the scheme will be assessed against Policy BE5 of the Finalised Local Plan.

7 FURTHER INFORMATION

The Scottish Executive smoking ban website, from which the smoking regulations can be accessed:

<http://www.clearingtheairscotland.com>

The Scottish Executive:

<http://www.scotland.gov.uk>

Scottish Executive Health Department,
Tobacco Control Division,
St Andrew's House,
Edinburgh EH1 3DG
Tel: **0131 244 5660**
Fax: **0131 244 2606**
Website: www.clearingtheairscotland.com
e-mail: info@clearingtheairscotland.com

Historic Scotland

<http://www.historic-scotland.gov.uk>

Lothian & Borders Police
Sgt Robert Shiel, Architectural Liasion Officer
Tel: 0131 311 3628

Scottish Borders Council
<http://www.scotborders.gov.uk>

The Blue Book (national smoking policy guidance) and warning signs may be ordered from the Scottish Executive Health Department, Tobacco Control Division, St Andrews House, Edinburgh, EH1 3DG Tel: 0845 300 3488.

SBC Area Offices

Planning, Environmental Health & Roads Area Offices

You can e-mail [Environmental Health](#), or contact our Environmental Health Service at any of the following locations. Please try your nearest office and, should it not be the appropriate one to deal with your area, staff will either pass the enquiry to, or if you prefer, give you contact details for the one that will.

Council Offices

Paton Street

GALASHIELS

TD1 3AS

Tel No. 01896 662706

Fax 01896 750329

This office covers the Galashiels, Selkirk, Melrose, St Boswells, Earlston and Lauder areas

Town Hall

High Street

HAWICK

TD9 9EF

Tel No. 01450 364706

Fax 01450 364716

This office covers the Hawick, Jedburgh and Kelso areas

Council Offices

Rosetta Road

PEEBLES

EH45 8HG

Tel No 01721 726 312

Fax 01721 726 304

This office covers the Peebles, Innerleithen and Walkerburn areas

Council Offices

44 Newtown Street

DUNS

TD11 3AU

Tel No. 01361 886 106

Fax 01361 884 474

This office covers the Duns, Coldstream and Eyemouth areas