



*Basingstoke
and Deane*

Planning advice note



Smoking shelters
– planning and
general guidance

Introduction

Smoke-free legislation in the Health Act 2006 came into force in England at 6am on Sunday 1 July 2007. Its aim is to create smoke-free places, and to protect workers and the public from the harmful effects of passive or secondary smoke.

This leaflet aims to help you in making decisions about outdoor smoking shelters. It is **not a definitive interpretation of the law** and before making any decisions about your smoking shelter you can seek advice from Basingstoke and Deane Borough Council. You are also advised to seek independent advice from your own legal advisor. It is your responsibility to make sure that your shelter complies with smoke-free legislation before you build it.

What type of premises will be affected?

Most public premises are affected by the new legislation, including restaurants, pubs, bars, shops, cinemas, shopping centres, leisure centres, offices, factories and other enclosed workplaces and public transport.

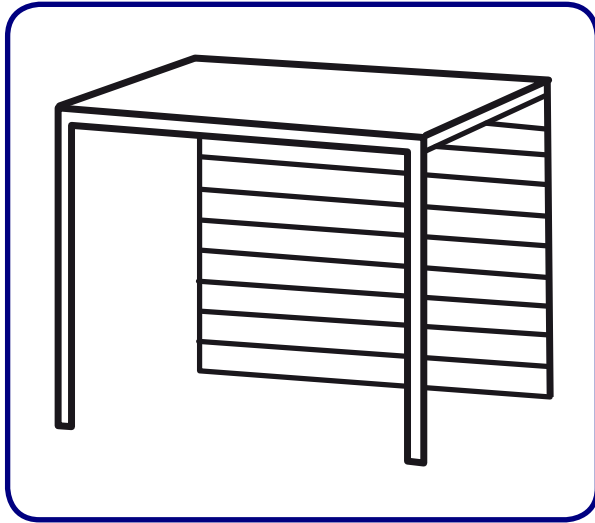
What is a smoking shelter and do I have to provide one?

There is no legal definition of a smoking shelter. Whether a proposed smoking shelter or related structure complies with the new health legislation is not a planning judgement. It is a matter for the borough council as an environmental health authority who will enforce the legislation.

The new legislation makes it illegal to smoke in enclosed and substantially enclosed premises. You do not have to provide a smoking shelter but if you do wish to do so, you must make sure that your smoking shelter is less than substantially enclosed.

This means that more than half (50%) of the shelter's sides must be permanently open.

Example of an acceptable smoking shelter

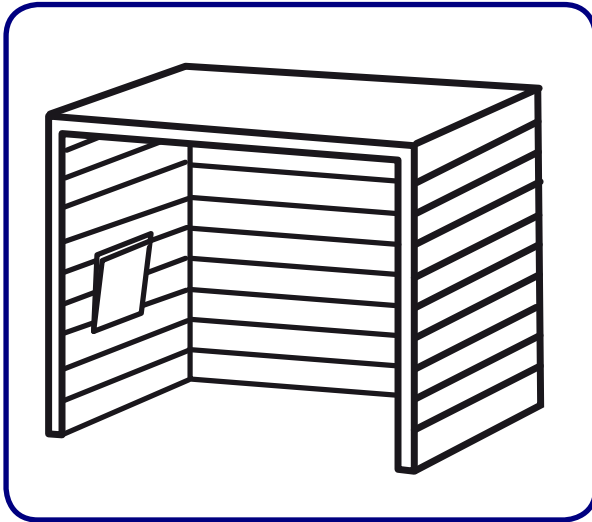


Where you put your shelter is also important incase it is too close to other buildings or enclosed.

Example of an unacceptable smoking shelter

A common mistake made in some areas has been to cover an existing courtyard with an awning. Because the yard has four walls and the awning provides a roof covering, the yard is considered substantially enclosed, even when the awning is withdrawn.

Make sure your shelter isn't enclosed or substantially enclosed – if it is then it will be a costly mistake as it will be affected by the new legislation and must be smoke-free.



The picture above shows an unacceptable smoking shelter – this would be considered as substantially enclosed.

Helpful websites

www.basingstoke.gov.uk/business/smokefree/

www.smokefreehampshire.co.uk

www.smokefreeengland.co.uk

Will I need planning permission?

You will normally need planning permission for:

- a smoking shelter structure – either freestanding or attached to existing buildings;
- awnings / canopies / blinds attached to buildings which have a material effect on the external appearance of a building (this is almost always the case);
- pavement and forecourt tables and chairs sited on the public highway or a private forecourt;
- 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, and
- stub-out bins on the front of premises.

If you are in any doubt it is recommended that you should contact the borough council, as the local planning authority, for advice.

Material considerations

All planning decisions are based upon planning policies contained within the Basingstoke and Deane Borough Local Plan 1996-2011, related guidance and any other material considerations.

When assessing a planning application for a shelter, awning or similar structure, the borough 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 and
- has no detrimental impact on neighbouring residents. Customers using your shelter may cause noise and other disturbance to neighbours which may trigger a review of your licence. It is important to try to avoid this by careful siting of your shelter.

In general, canopies, shelters, heaters and similar structures sited on the public highway or on other public spaces are unlikely to be permitted.

Proposals relating to a listed building or in conservation areas would need to be carefully considered. In respect of listed buildings, the setting and special interest of the building must be respected. Within conservation areas, proposals should preserve or enhance the character or appearance of the area.

Other things to remember

Licensing – if you have conditions on your premises licence restricting the use of outdoor areas, you may need to vary the licence to use your smoking shelter. This is regardless of whether the shelter requires planning permission. Contact the licensing team for further information call **01256 845374** or email **licensing@basingstoke.gov.uk**

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 at **www.basingstoke.gov.uk/planning/dc/forms/**

Building control – your smoking shelter may require approval under building regulations especially if you are intending to install heaters or lighting. You must also be careful to ensure that your shelter does not create new contraventions to existing buildings such as blocking fire escapes, vents or flues. The building control team can be contacted on **01256 845237**.

Disability Discrimination Act – your smoking shelter must be suitable for everyone to use. The design must consider wheelchair users and those with visual and hearing impairments.

Your shelter must be gale proof and you must provide fire retardant ashtrays suitable for outdoor use.

Are there any type of premises that are exempt from the ban?

Premises exempt from the legislation will include:

- private accommodation, but not common areas such as staircases and lifts;
- hotel accommodation;
- other residential accommodation in care homes, hospices and mental health units, and
- prisons for adults

Get in touch

This advice note is intended as a guide to a complicated process. If you would like further information, you can contact a planning officer at:

Development Control
Basingstoke and Deane Borough Council
Civic Offices
London Road
Basingstoke
RG21 4AH

Telephone: **01256 844844**

Fax: **01256 845200**

e-mail: **development.control@basingstoke.gov.uk**

You can also visit the planning and environmental health pages of the council's website at: **www.basingstoke.gov.uk**