

# Wirral Council

## Smoking Shelter Guidelines



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### Acknowledgements

Most of the information contained in these guidelines has been developed by Ellesmere Port and Neston City Council, Rushcliffe Council, Gateshead Council and Leicester City 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 be taken as an endorsement of any particular type or make.

## LEGAL CONSIDERATIONS

### Introduction

Wirral Council wants to see local businesses thrive during the introduction of smoke free legislation, as has been the case in Ireland, Scotland and Wales. 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 Smoke-free (Premises & Enforcement) Regulations 2006 nearly all public places and work places that are enclosed or substantially enclosed must be smoke-free 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 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:

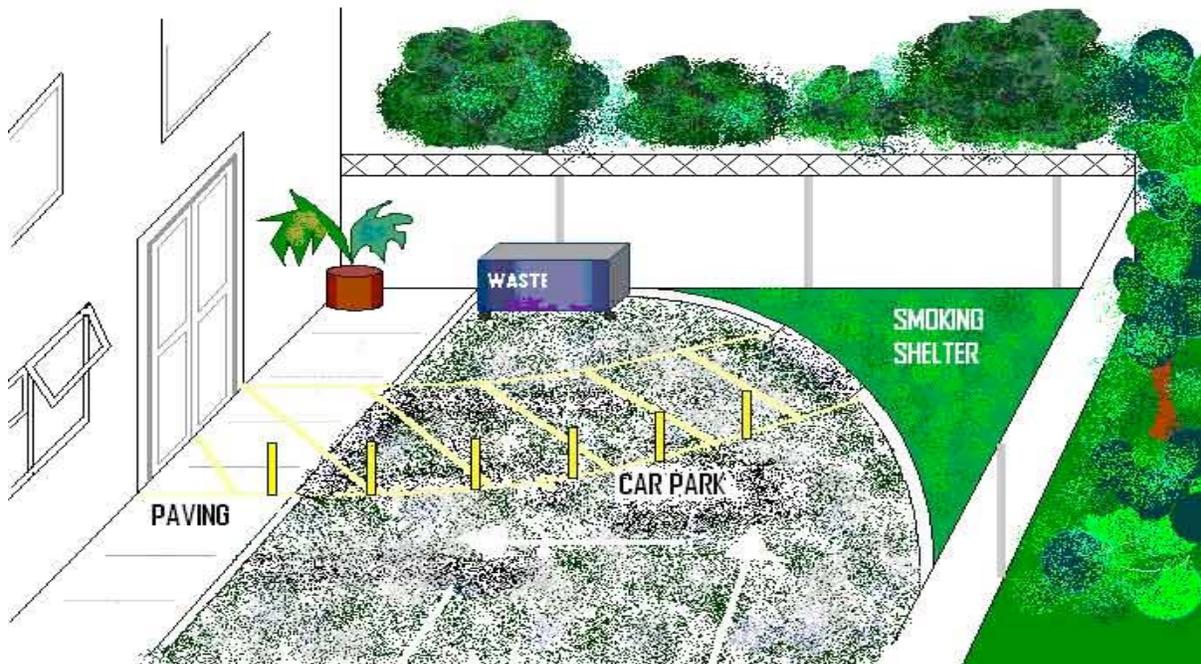
Premises will be considered to be partially enclosed if they have a ceiling or roof, but there are openings in the walls which are **more** than half of the total wall area, including other structures that serve the purpose of walls and make up the perimeter of the premises. When working out the area 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 adjoining walls, structures, doors etc do not restrict air movement.

## 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). This is particularly important with historic buildings and buildings in Conservation Areas.

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



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: -

- .• Barriered 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 entering into the building. This can be 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.

## LICENSING CONSIDERATIONS

Smoking Shelters that are to be built on licensed premises for customers and staff should be aware of restrictions within their licence, particularly involving outside areas. It is strongly advised that Premise' Licence holders look carefully through their licence as most premises in the Wirral 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 and Licence Restrictions

Below are example licence conditions applied to a number of licensed premises.

***“Management should ensure that the external drinking areas are only utilised between 10:00 and 22:00”***

***“Use of the beer garden shall not be permitted between the hours of 23:00 and 10:00”***

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 noise travels 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.

### 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. The contact number for licensing is listed at the end of the guidance.

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.

All planning applications for smoking shelters are subject to comment by the Pollution Control Team and the Health & Safety Team. Where the site of a smoking shelter could be a source of public nuisance the unit is likely to object. Early consultation is highly recommended.

## **NUISANCE & ANTI-SOCIAL BEHAVIOUR CONSIDERATIONS**

Where possible smoking shelters should be sited away from private housing where smoke and noise may become an environmental issue (see Noise/Nuisance).

It should be noted that any public nuisance caused in a beer garden by customers is the responsibility of the Premises Licence Holder or Designated Premises Supervisor.

It is the responsibility of staff at the premises to ensure noise from all external areas is kept to a minimum. Display posters asking customers to keep noise to a minimum.

Please be aware that the Licensing Act 2003 has brought in new powers for both Enforcement Agencies and residents to have a say in how licensed premises operate. Residents now have the ability to call for a "Review" if they are affected by any of the Licensing Objectives:

- .•Prevention of Public Nuisance
- .•Prevention of Crime and Disorder
- .•Protection of Children from Harm
- .•Public Safety

This could include noise from an outside smoking shelter, smoking area or beer garden whether alcohol is being consumed or not. A review could lead to stricter conditions, reduction in operating hours or ultimately a revocation of the licence.

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, close boarded fence etc) between customers and residents to help mitigate the noise.
- .•Speak to your neighbours, advise what you plan to do and get their suggestions
- .•Look through your license carefully and check what you are licensed to do, do you require a variation?
- .•Display posters to keep noise 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 after the premises is closed.

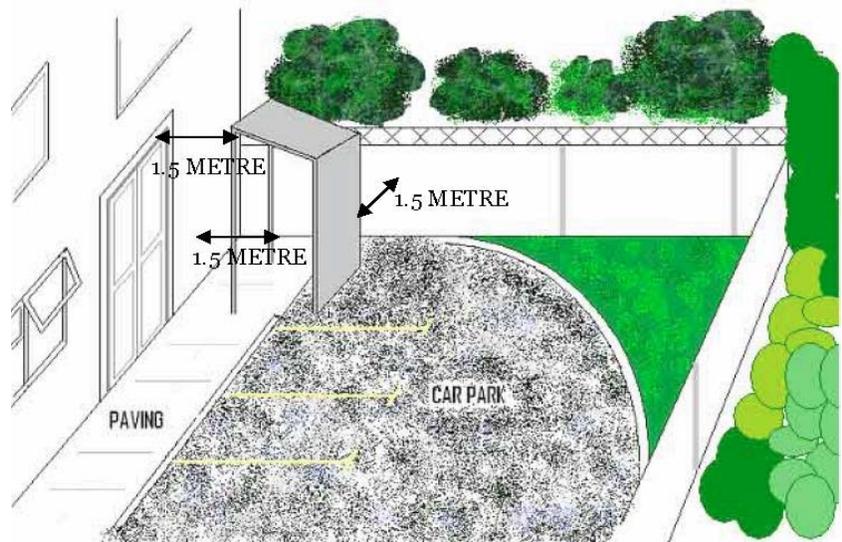
### Anti-social Behaviour

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

## Noise/Nuisance

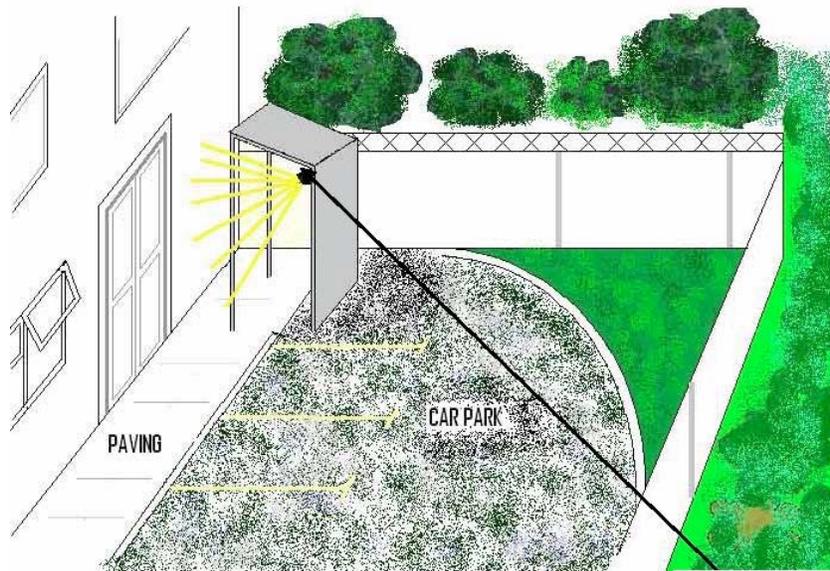
The smoke free legislation will increase the amount of times external doors are used for entrance and egress. If you operate premises with regular entertainment, be aware that this will increase the amount of noise escaping. To avoid causing a noise nuisance to adjoining premises, an "acoustic (ventilated) lobby" should be provided. This can be achieved by providing doors that are off-set, for any external doors predominantly used as an access/egress to smoking areas. These doors should be fitted with self-closures. This will help minimise the amount of noise that escapes when people go outside to smoke and limit the ingress of smoke back into the building.

All shelters should be faced inwards to reduce noise. However to meet the regulations any edges of the smoking shelter should be at least 1.5 metres away from other structures, such as walls or hedges so that it is not considered part of the shelter. This could then affect the 50% open air rule. The example opposite is acceptable.



## 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.



Lighting

## **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.

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, 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 should be provided with metal (or other fire retardant material) ashtrays suitable for outdoor use, that are made from a non-corrosive metal.

	<p>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.</p> <p>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.</p>	
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### Heating/Lighting

If you wish to provide heating in 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 you must provide permanently fixed radiant heaters positioned so that they can not be tampered with and pose an additional fire hazard due to the gas cylinder supply. However, where there is not other option the duty holder must complete a risk assessment in accordance with current legal requirements

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 not another option the duty holder must complete a risk assessment in accordance with current legal requirements.

### Fire Safety

It is important to be aware that under the Regulatory reform Fire safety, order 2005, those who own or operate premises, whether employers or not, have a legal duty to undertake a fire risk assessment. This assessment should take account of the provision of a smoking shelter and the risk of fire due to the potential sources of ignition (cigarettes and matches) and any combustible materials.

### 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.

### Visibility and Appearance

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. [Development Control can provide assistance – see information below]

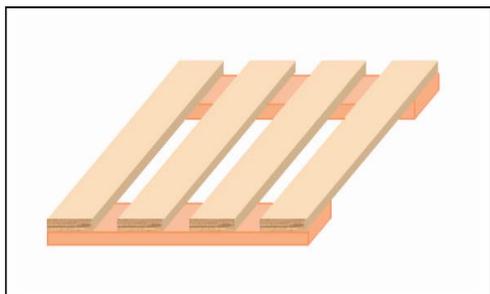
### Material/Fabric

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.

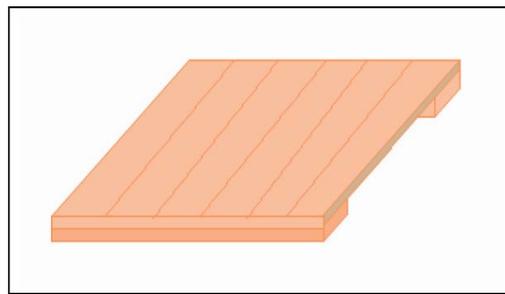
Additionally wood should be avoided, but where wood is necessary to the design, such as for decked smoking areas, all precautions must be taken to avoid the risk of fire through a build up of waste. Therefore any raised decking area must be fully enclosed, with access underneath to ensure any waste can be cleared regularly.



The decking should be installed to avoid gaps between the flooring board to prevent unextinguished 'butts' falling below.

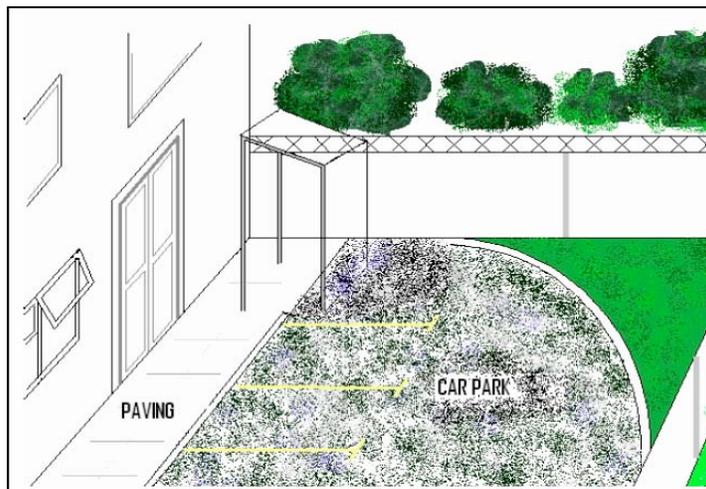


Unsatisfactory decking



Satisfactory decking

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.

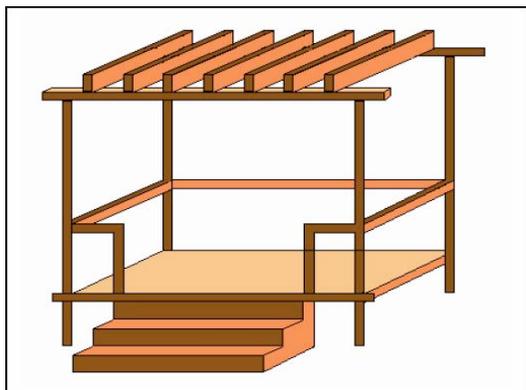
## EQUAL ACCESS CONSIDERATIONS

### Disability Discrimination Act

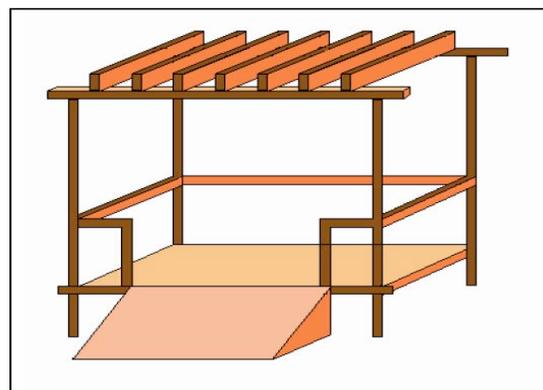
The smoking shelter must be suitable for everyone to use. The design must consider wheelchair users and therefore have safe access. It must also consider visual and hearing impairments, and consider the following: -

- 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.



This is a suitable smoking shelter as it does have access for wheelchairs

## **PLANNING/BUILDING CONTROL CONSIDERATIONS**

### Planning

Most smoking shelters and similar structures will require planning permission and some times approval under the Building Regulations (see below) as well as approval under 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).

Planning advice and permission can be sought through Wirral Council's Planning Department using the following link:-

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

When considering shelter applications the planners will consider amongst other things: the location; the structure design, visual intrusion, loss of outlook, light pollution, the siting of adjacent doors/windows/air intake systems etc, secondary smoke infiltration into adjacent properties, and loss of parking spaces.

NB Planning permission will not normally be required for portable freestanding awnings/canopies, umbrella type shelters, and space heaters.

### 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. The relevant exemption classifications that smoking shelters could fall under are:

#### CLASS VI: Small detached buildings

1. A detached single storey building, having a floor area which does not exceed  $30\text{m}^2$ , 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  $15\text{m}^2$  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 30m<sup>2</sup>, 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 coordinator 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.

**The planning department will not take into account the compliance of a smoking shelter when considering if an application is to be accepted. It is up to the applicant to ensure that the smoking structure is 50% open to the outside air. Smoke-free officers will be informed that a smoking shelter planning application has been submitted. They will then take note and visit the structure in future to check compliance. To avoid any compliance issues contact the smoke-free team on 0151 606 2020 for advice.**

## **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



No Glazing



Unacceptable Designs



## **MORE INFORMATION**

### Further Information

Smoke Free Legislation Information

Website: <http://www.smokefreeengland.co.uk/>

Tel: 0800 169 1697

Useful Contacts (Wirral Council):

Smoke-free enforcement team: Kim Ozano or Claire Hogan

Tel: 0151 606 2020

Email: [environmentalhealth@wirral.gov.uk](mailto:environmentalhealth@wirral.gov.uk)

Building Control: Information & Advice

Tel. 0116 252 6651

Noise and Lighting: Cliff Jones, Pollution Control

Tel: 0151 691 8401

Licensing:

Tel: 0151 691 8475/6

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:

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

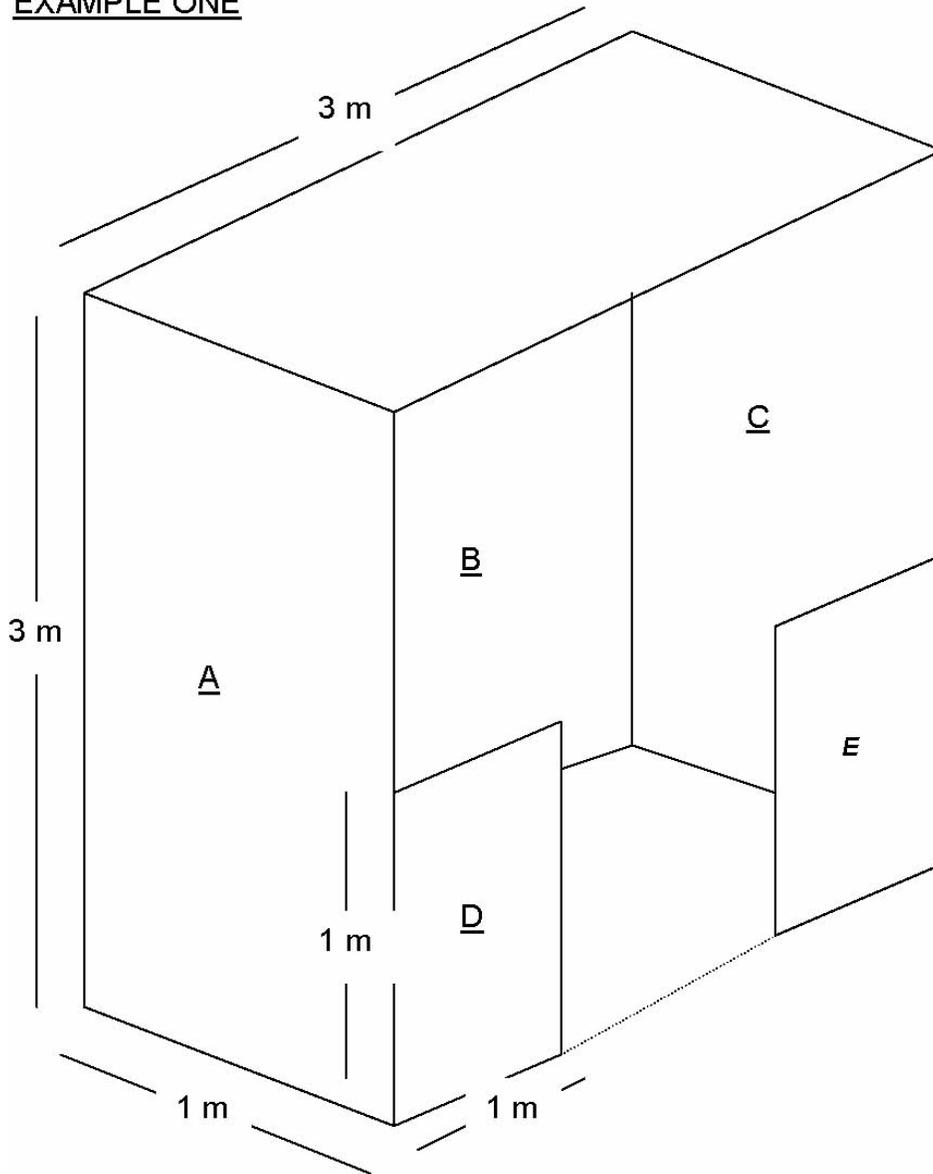
If the percentage calculated is MORE THAN 50% then smoking WILL NOT be permitted.

For the purposes of all of the above calculations, any openings (such as doors and windows) 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



Enclosed area Area of perimeter

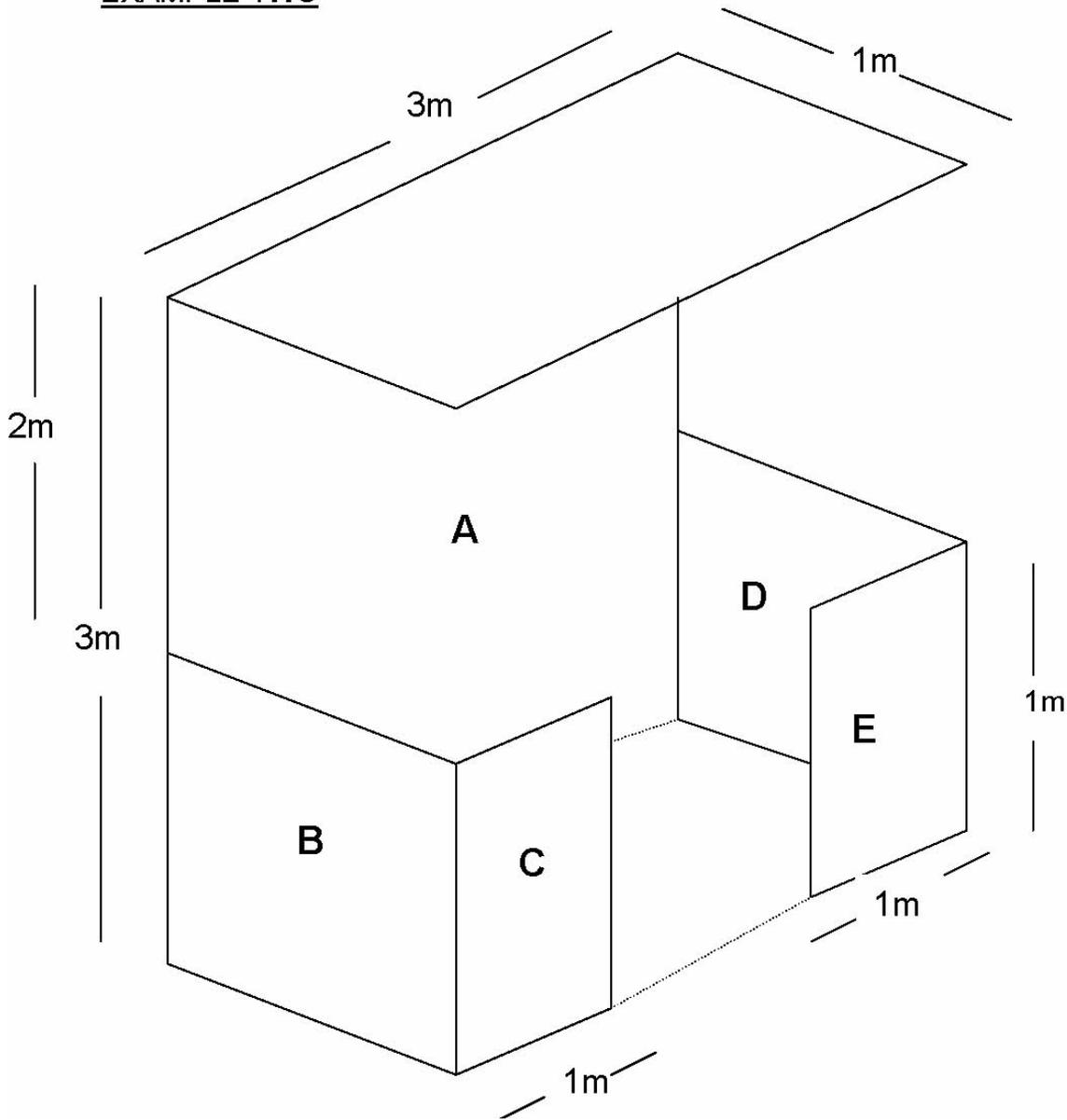
Area A  $3\text{ m} \times 1\text{ m} = 3\text{ m}^2$  Sides  $\times 2 = 1\text{ m} \times 3\text{ m} \times 2 = 6\text{ m}^2$  Area B  $3\text{ m} \times 3\text{ m} = 9\text{ m}^2$  Front & back  
 $3\text{ m} \times 3\text{ m} \times 2 = 18\text{ m}^2$  Area C  $3\text{ m} \times 1\text{ m} = 3\text{ m}^2$  Area D  $1\text{ m} \times 1\text{ m} = 1\text{ m}^2$  Area E  $1\text{ m} \times 1\text{ m} = 1\text{ m}^2$

Enclosed area =  $17\text{ m}^2$  Area of perimeter =  $24\text{ m}^2$



$\frac{17}{24} \times 100 = 62.9\%$  Enclosed - **NOT ACCEPTABLE**

EXAMPLE TWO



Enclosed area Area of perimeter

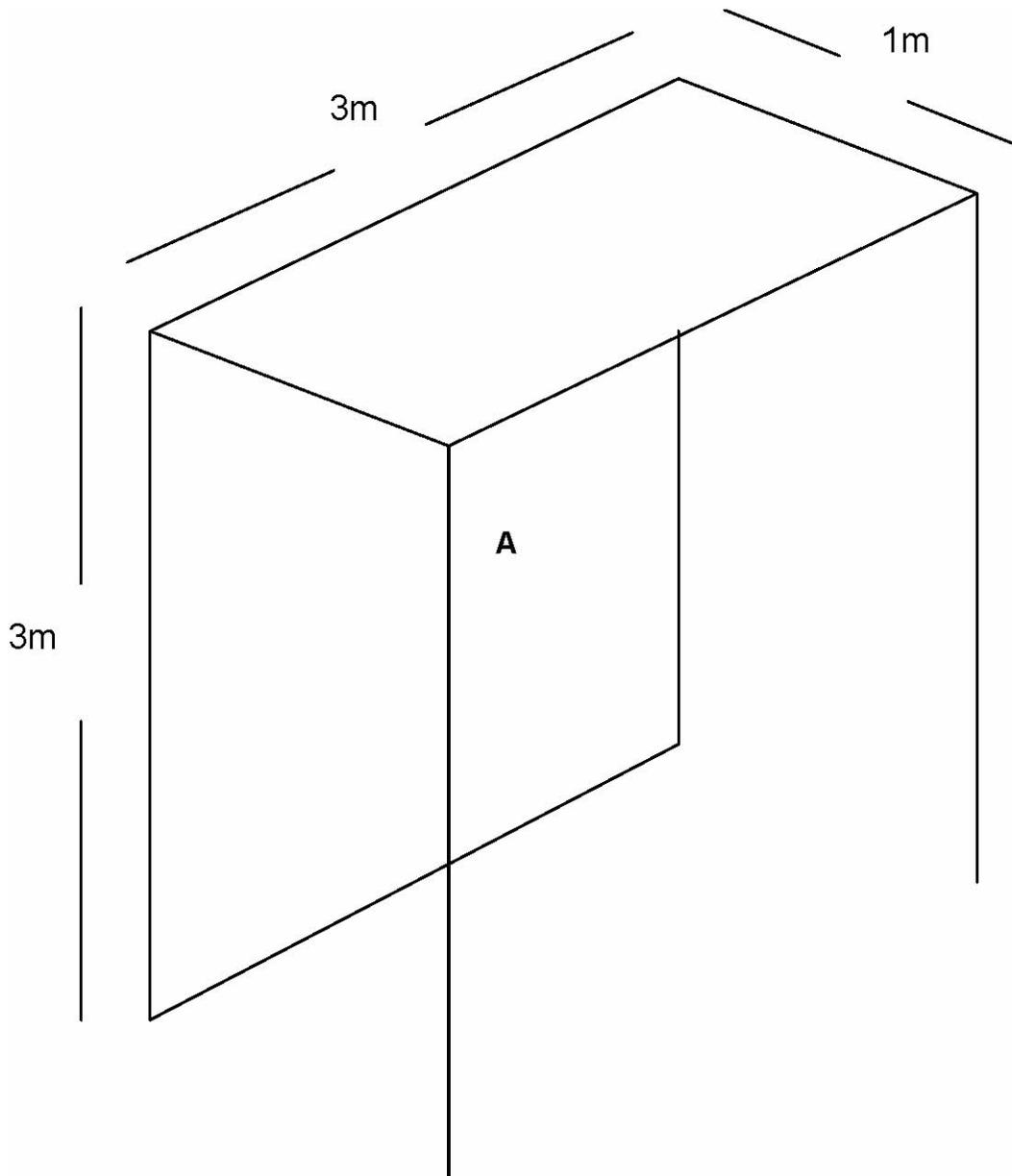
Area A  $3\text{m} \times 3\text{m} = 9\text{m}^2$  Sides  $\times 2 = 1\text{m} \times 3\text{m} \times 2 = 6\text{m}^2$  Area B  $1\text{m} \times 1\text{m} = 1\text{m}^2$  Front & back  $3\text{m} \times 3\text{m} \times 2 = 18\text{m}^2$  Area C  $1\text{m} \times 1\text{m} = 1\text{m}^2$  Area D  $1\text{m} \times 1\text{m} = 1\text{m}^2$  Area F  $1\text{m} \times 1\text{m} = 1\text{m}^2$

Enclosed area =  $13\text{m}^2$  Area of perimeter =  $24\text{m}^2$



$\frac{13}{24} \times 100 = 61.9\%$  Enclosed – **NOT ACCEPTABLE**

EXAMPLE THREE



Enclosed area

Area A  $3\text{m} \times 3\text{m} = 9\text{m}^2$

Enclosed area =  $9\text{m}^2$

Area of perimeter

Sides  $\times 2 = 1\text{m} \times 3\text{m} \times 2 = 6\text{m}^2$   
Front & back  $3\text{m} \times 3\text{m} \times 2 = 18\text{m}^2$

Area of perimeter =  $24\text{m}^2$



$\frac{9}{24} \times 100 = 37.5\%$  Enclosed **ACCEPTABLE**