

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT SERVICES DIRECTORATE	TOURISM AND LEISURE COMMITTEE	14 MARCH 2019	4
PROPOSALS FOR THE CONTROL OF BARBECUES AND OTHER OUTDOOR COOKING ON COUNCIL OWNED LAND			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

This report presents the results of further consultation undertaken on proposals to control the use of barbecues and other outdoor temporary cooking facilities on council owned land and seeks a decision as to how members wish to proceed.

RECOMMENDATIONS

The Tourism and Leisure Committee is requested to consider the report and select which option it wishes to proceed with to introduce some control over barbecues and other outdoor temporary cooking facilities on council owned land. Members are asked to consider the options listed below, which include resource implications as appropriate, and select the option most appropriate to addressing issues related to barbecues and outdoor temporary cooking facilities in the areas identified:

1. Option A to propose a full prohibition of barbecues and other outdoor temporary cooking facilities on council owned land through the application of a Public Spaces Protection Order. This would require a decision to:
 - a. set the level of the Fixed Penalty Notice at (up to £100).
 - b. recommend to Council an additional unfunded annual revenue budget increase of £38,000 to cover the cost of enforcement.
2. Option B to propose a partial prohibition of barbecues and other outdoor temporary cooking facilities on council owned land through the application of a Public Spaces Protection Order with the provision of managed barbecue zones in two designated locations. This would require a decision to:
 - a. set the level of the Fixed Penalty Notice at (up to £100).
 - b. recommend to Council an additional unfunded capital budget increase of £14,100 to cover the cost of infrastructure at the two designated barbecue sites
 - c. recommend to Council an additional unfunded annual revenue budget increase of £38,000 to cover the cost of enforcement.
3. Option C to propose the introduction of advisory guidelines for the use of barbecues and other outdoor temporary cooking facilities, publicity and signage for using barbecues safely and responsibly and includes a 'code of practice' to advise which barbecues are acceptable and which are not and which areas where the use of barbecues is not acceptable i.e. sand dunes and nature reserve. This would require a decision to:
 - a. recommend to Council an additional unfunded capital budget increase of £20,000 to cover the cost of infrastructure in locations which are regularly used for barbecues.
4. Option D propose no regulations, legislation or advisory guidelines in place. No change to the existing position, continue to monitor activity and the impact on the local community with a view to reviewing the options after gathering data and evidence for another season.

SUMMARY OF PREVIOUS DECISIONS

Tourism and Leisure Committee – 7 June, 2018

Proposals for the control of barbecues, outdoor cooking and other forms of fire on council owned land

1. The committee notes the low level of response to the consultation and feels it makes it impossible for the council to be satisfied on reasonable grounds at this time that any of the proposed measures are necessary to prevent detrimental effects on those in the locality or reduce the likelihood of the detrimental effect continuing, occurring or recurring. In those circumstances, the statutory requirements for making a PSPO are not met.
2. The committee requests that further work is undertaken to understand the impacts of the problem and possible solutions to barbecues, outdoor cooking and open fires and that this include a re-consultation during the summer months.
3. The committee requests that in the meantime, more focus is given by the Parks and Coastal Services Team in an attempt to monitor the issues in these locations.

Tourism and Leisure Committee – 22 June, 2017

Prohibition of barbecues, outdoor cooking and other forms of Fire on council owned land

1. That the committee approve the carrying out of consultation on the introduction of a public space protection order to prohibit or control the use of barbecues, outdoor cooking on gas or charcoal fuelled facilities and other forms of fire on council owned land within the coastal tourism area of Lytham and St Annes identified in Appendix 1 of the report.
2. To approve the erection of temporary advisory signage preventing the use of barbecues, outdoor cooking facilities and other forms of fire at key locations as set out in Appendix 2 of the report until the legislation can be put in place.

Tourism and Leisure Committee – 12 January, 2017

Developing a Policy on Events Including Club Days, Festivals and Concerts

1. To approve the proposed policy on events including club days, festivals and concerts as set out in Appendix 1 of the report subject to the word “usually” being inserted (prior to the words set out in last column) in Category D of the Events Categorisation.

The policy approved includes: Barbecues held on Council land as part of events should be done so in a responsible manner and limiting inconvenience and nuisance to others and held in appropriately constructed equipment. Any evidence of a barbecue having taken place should be disposed of responsibly and appropriately once completed along with any litter generated.

CORPORATE PRIORITIES

Spending your money in the most efficient way to achieve excellent services (Value for Money)	√
Delivering the services that customers expect of an excellent council (Clean and Green)	√
Working with all partners (Vibrant Economy)	√
To make sure Fylde continues to be one of the most desirable places to live (A Great Place to Live)	√
Promoting Fylde as a great destination to visit (A Great Place to Visit)	√

REPORT

BACKGROUND

1. The Council has received a total of 12 formal customer complaints regarding barbecues on council land since March 2017 - 9 via officers (parks, customer services and environmental protection) and 3 through social media. The complaints referred specifically to barbecue activity at Fairhaven Lake. Concerns included fire damage to park furniture (actual damage to one park bench) and grass areas, smoke pollution, food odours, littering and safety hazards relating to barbecues on public open spaces and ecological sites.

2. Hot and dry weather conditions during the summer of 2018 exacerbated the fire risk, which resulted in two fire incidents on Lytham Green and Fylde Sand Dunes Nature Reserve. Lancashire Fire and Rescue Service report that the incident on Lytham Green was caused by an unattended barbecue although the fire on the sand dunes was set deliberately by youths and so not related with barbecues.
3. It is estimated that the direct damage caused by barbecues on council land in the last two years has been 2 picnic benches and 2 litter bins (which were not fire resistant) damaged at a cost of £1,362 (all of which were at Fairhaven Lake).
4. The Council was asked by lead members to review its position and identified that there are no regulations or legislation in place to manage or prohibit barbecues on Council land. There are also no designated areas that allow people to barbecue without potentially causing nuisance to others. This could be attributed to the fact that any incidents have been recent rather than the problem having a long history. Consequently, the Tourism and Leisure Committee requested a report outlining details on the current issues, legal options and methodology for mitigation.
5. The first report [Prohibition of Barbecues, Outdoor Cooking and other forms of Fire on Council Owned Land was presented to committee on 22nd June 2017](#). Members resolved to carry out a formal Public Consultation Exercise on the possible introduction of a Public Spaces Protection Order (PSPO) to prohibit or control barbecues in the coastal locations of Lytham and St Annes on Sea. The first consultation was undertaken November – December 2017.
6. The second report [Proposals for the Control of Barbecues, Outdoor Cooking and Other Forms of Fire on Council Owned Land was presented to committee on 7th June 2018](#). The committee noted the low level of response to the earlier consultation and felt it made it impossible for the Council to be satisfied on reasonable grounds at the time that any of the proposed measures were necessary to prevent detrimental effects on those in the locality or reduce the likelihood of the detrimental effect continuing, occurring or recurring. In those circumstances, the statutory requirements for making a PSPO were not met. The committee requested that further work was undertaken to understand the impact of the problem and possible solutions to barbecues, outdoor cooking and open fires and that this included a re-consultation during the summer months. The second subsequent consultation was undertaken July – September 2018.

CONSULTATION PROCESS

7. A consultation framework was developed in adherence to the [Local Government Association Public Spaces Protection Orders Guidance for Councils](#). The same framework was used for both consultations in 2017 and 2018. The guidance stipulates that effective consultation should provide an overview of what the local issue is, set out why a PSPO is being proposed and what its impact will be.
8. Consultation is a requirement to satisfy legislative requirements of the Anti-Social Behaviour, Crime and Policing Act 2014 and helps to inform the council's view as to whether requirements under Section 59 of the Act have been adequately fulfilled. The 2018 consultation timeline and process followed is outlined below:
 - Press release issued beginning of July 2018. Information released on social media including Facebook, Twitter and council website.
 - Erection of posters at Fairhaven Lake, Lytham Green, dune entrance points and wider coastline.
 - On-line public survey went live 9th July and closed 2nd September 2018.
 - Paper copy surveys made available at Town Hall and Fairhaven Lake.
 - Public consultation survey results and comments compiled and evaluated September – October 2018.
 - Statutory consultation undertaken with Lancashire County Council, Police and Crime Commissioner and Lancashire Fire and Rescue in September 2018.

CONSULTATION RESULTS

9. The public consultation results for both the 2017 and 2018 consultation exercises are detailed in table 1 below. This presents the qualitative results of the 4 main questions asked in both consultations.

Questions	Consultation 1 - 2017		Consultation 2 - 2018		Combined results from both consultations	
	Numbers	Percentage	Numbers	Percentage	Numbers	Percentage
You are completing this questionnaire as:						
Resident of Fylde	113	91.13%	300	92.60%	413	92.19%
Visitor to Fylde	8	6.45%	16	4.94%	24	5.36%
Elected member	2	1.61%	3	0.92%	5	1.11%
Charity/organisation	1	0.81%	2	0.62%	3	0.67%
Other	0	0.00%	3	0.92%	3	0.67%
Do you feel BBQ's or open fires a problem on Fylde's Public Open Spaces?						
Yes	74	59.20%	276	78.86%	350	73.68%
No	51	40.80%	65	18.57%	116	24.42%
No response	0	0.00%	9	2.57%	9	1.90%
Do you feel BBQ's or open fires have impacted your visit?						
Yes	55	43.22%	182	51.70%	237	50.00%
No	68	56.78%	154	43.75%	222	46.73%
No response	0	0.00%	16	4.55%	16	3.36%
Do you support the introduction of a PSPO to prohibit use, object to the proposed PSPO or support control measures?						
Support PSPO proposal	55	44.00%	191	54.57%	246	51.79%
Object PSPO proposal	31	24.80%	28	8.00%	59	12.42%
Support use with control	39	31.20%	131	37.43%	170	35.79%
If they are to be controlled, what potential methods would you support?						
Location restrictions	41	33.07%	79	22.51%	120	25.26%
Time restrictions	8	6.45%	11	3.13%	19	4.00%
Dedicated BBQ spaces only	75	60.48%	248	70.66%	323	68.00%
No response	0	0.00%	13	3.70%	13	2.74%

Table 1 – Outcome of both 2017 and 2018 survey consultations (five main quantitative questions)

10. Both consultations invited respondents to provide comments (qualitative responses). The first 2017 survey was [attached to the report which was presented to committee on 7 June 2018](#). The qualitative responses provided in the second 2018 consultation exercise are attached to this report at Appendix 1.
11. The qualitative comments made by respondents should be read alongside the above quantitative results.
12. The 2018 statutory consultation produced one response from Lancashire Fire and Rescue (LFRS). They advised *'designated areas only for barbecues if its closely monitored and the areas prepared for such. The barbecue sites should also have proper disposal areas within them, especially for hot ashes, fire resistant areas for barbecues and signage. A blanket no [ban] could promote lots of rogue BBQs that are not easy to monitor causing us [the Fire and Rescue Service] issues. The issue areas for LFRS are mainly the sand dunes and nature reserve, so there should be no designated barbecue sites within these areas.'*
13. Consultation was undertaken with the Preston Black Minority Ethnic (BME) Forum as part of the Fairhaven Heritage Lottery Fund (HLF) Stage 2 Target Audience Consultation, the group were identified as significant users of the open space at Fairhaven Lake. A key objective of the BME Forum is to support consultation and liaison on the barriers and issues facing BME Communities to achieve social and community cohesion. The forum advised that well managed, designated barbecue areas would facilitate community support and participation and could lead to more diverse cultural events and activities on Fairhaven Lake.

BEST PRACTICE/OTHER COUNCILS

14. Consultation with neighbouring councils to determine variables in approaches across the west of Lancashire revealed that control or prohibition of barbecues wasn't a high priority. The authorities consulted included:

- Preston City Council: Bye law prohibition in place for the lighting of fires. No PSPO in place. Separate bye laws to protect statutory ecological sites including LNR's and SSSI's which prohibit fires with no enforcement resource.
- Blackpool Council: Bye law prohibition in place for the lighting of fires on public open spaces. No PSPO in place. Separate bye laws to protect statutory ecological sites including LNR's which prohibit fires.
- South Ribble Borough Council: No bye law prohibition in place for the lighting of fires. No PSPO in place.
- Wyre Council: Bye law prohibition in place for the lighting of fires on public open spaces. BBQs take place on Wyre Estuary Country Park, but level of nuisance and damage is relatively minimal. No PSPO in place.

None of the above councils report having used their byelaws to prosecute anyone for the lighting of fires/barbeques in recent years.

15. A desktop internet study of approaches in other local authorities countrywide was undertaken using the search terms 'PSPO barbecue'. From this research it appears there are different approaches in place to managing barbecues on council owned land. The main three approaches identified were as follows:

- Blanket borough wide barbecue and open fires prohibitions on public open spaces through bye-laws or PSPO. Only a handful of authorities could be identified as currently having or have had a PSPO in place to control barbecues on parks/council land. An example of this approach using a PSPO is at [London Borough of Richmond](#).
- Designated barbecue areas provided, but selective prohibitions in sensitive areas such as statutory ecological sites, cemeteries and small pocket parks where the impact of barbecues is felt more prominently or has greater impact. An example of a selective prohibition using a PSPO is at [Torbay Council](#).
- An advisory approach to the management of barbecues with selective bans on disposable barbecues, gas barbecues but permitted portable reusable types. This to encourage users to use their own equipment and ensure the barbecue is safely extinguished before leaving. An example of this approach is at [London Borough of Camden](#).

16. The [London Borough of Camden](#) previously had a ban in place to prohibit the use of barbecues but removed them because of the negative publicity from residents and visitors, restrictions with enforcement lead to more confrontational engagement with the public. The Council has opted for an advisory approach with a ['code of conduct'](#) instead.

17. The [London Borough of Islington](#) is currently consulting on a proposal to introduce a byelaw on the use of barbecues in Highbury Fields which would limit the use of barbecues to a designated area of the park if introduced.

LEGISLATION

18. Regardless of the results of the consultation, a PSPO can only be introduced to restrict behaviour which is having, or is likely to have, a detrimental effect on the quality of life of those in the locality; is persistent or continuing in nature; and is unreasonable. The findings of the 2018 consultation indicated that 78.86% felt that BBQ's or open fires were a problem on Fylde's Public Open Spaces (2017 & 2018 results combined is 73.68%). Meanwhile in the 2018 consultation 51.7% felt that barbecues impacted on their visit (2017 & 2018 results combined is 50%).

19. The Government's statutory guidance on the use of PSPOs, to which the council must have regard, says that *'in establishing which restrictions or requirements are included, the council should be satisfied on reasonable grounds that the measures are necessary to prevent the detrimental effect on those in the locality or reduce the likelihood of the detrimental effect continuing, occurring or recurring...[T]he council should give due regard to matters of proportionality...the restriction[s] proposed [should be] proportionate to the specific harm or nuisance that is being caused'*.

20. If members choose to pursue any option that involves making a PSPO, the committee will need to conclude that barbecues and outdoor cooking in the areas to be controlled are having a detrimental effect on people in

the locality, that the occurrence of barbecues and outdoor cooking is persistent, continuing and unreasonable, and that the restrictions proposed are proportionate to the harm or nuisance.

OPTIONS FOR CONTROL OF BARBECUES

21. The options presented start with the most restricted prohibitive enforcement available using PSPO's through to retaining the current position, they are not presented in order of preference.
22. Further to evaluation of the consultation data and studies of methodologies used by other councils, the report presents a number of options available for the control of barbecues on public open spaces. These options are summarised in figure 1 below, they are by no means mutually exclusive and members may feel based on the information presented in this report that alternative recommendations are proposed.

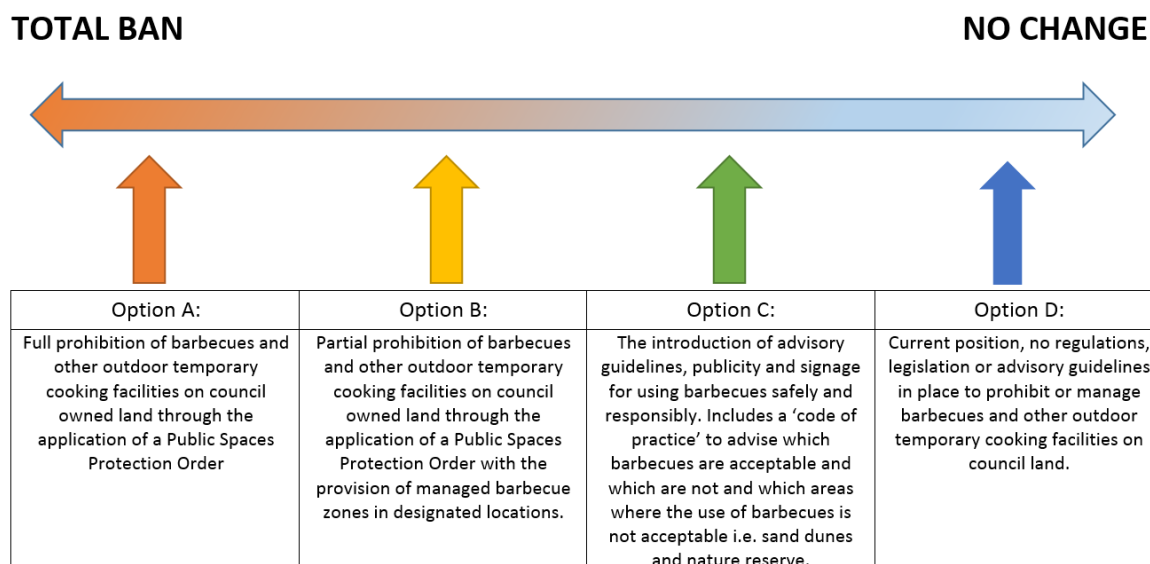


Figure 1 - Options for the control of barbecues and other forms of outdoor cooking

23. To ensure that a proportionate and measured response is taken to the issue of barbecues and other outdoor cooking facilities, the benefits and disadvantages of each option are outlined for members to consider when making a decision.

OPTION A - FULL PROHIBITION OF BARBECUES

24. Full prohibition of barbecues on council owned land¹, through the application of a Public Spaces Protection Order. There would be an exemption to the prohibition where the council has given express prior consent, e.g. for a particular use/event. The order would apply to the list of proposed sites as shown in the schedule at Appendix 2, members can include or exclude council owned sites from the proposed list.

OPTION A - Benefits:

- Provides the council full authority to draft and implement prohibitions to target the specific problem in the locations listed and apply to everyone in that locality.
- Would help prevent physical damage and disturbance to landscape, wildlife and infrastructure.
- In the 2018 consultation 54.57% of respondents supported a blanket ban (2017 & 2018 results combined is 51.79%).
- Provides officers with a clear basis for enforcement and enables fixed penalties to be issued for persistent anti-social behaviour.

OPTION A - Challenges:

- The consultation results cannot of themselves establish that the stipulations in the 2014 Act are satisfied. The stipulations are that the activity to be controlled has had a detrimental effect on the

¹ The area within which prohibition on council owned land will be applicable is shown with a red line on the consultation plan which is attached to the previous report considered by the [Tourism and Leisure Committee on 22nd June 2017](#).

quality of life of those in the locality, is (or is likely to be) of a persistent or continuing nature, is unreasonable, and justifies the restrictions to be imposed.

- Negative publicity may be received if the council is perceived to implement a prohibition (a restriction on behaviour) without consideration of other such as Options B or C.
- Negative image of the council from issuing Fixed Penalty Notices to residents/visitors who are using barbecues, any engagement would be potentially confrontational because of the need to enforce restrictions on an activity.
- Wide ranging publicity and signage would be required to ensure the policy was clearly communicated and legally enforceable. This would have a capital cost and ongoing revenue implication which could be seen as disproportionate to the issue being addressed.
- A policy across a large geographical area would make enforcement challenging and more enforcement resource would be required to ensure compliance particularly in the summer season. This would have an ongoing revenue cost implication.
- The coastal area of Lytham St Annes has a higher than average amount of apartment properties which do not have access to their own garden areas to barbecue. If a complete prohibition was introduced these residents would not have access to open spaces to barbecue when the weather was favourable.
- The Friends of Fairhaven Lake (FoFL) who are a partner stakeholder do not support the full prohibition of barbecues and instead support the option of providing designated barbecue areas.
- The Fairhaven Lake and Garden Restoration HLF Project Board were asked for a view on providing a designated barbecue area or not - during the board meeting in January, 2018. Concerns were raised that the HLF encourage councils to utilise community engagement, education and provision of well-designed facilities to prevent anti-social behaviour. Prohibition is viewed as a last resort after all other options have been explored. The board were unanimously in favour of a designated barbecue area.
- A blanket ban may be contrary to the objectives of the Green Flag Award scheme. Criterion 4 of the award refers to balancing the requirements of different ages, cultural and social groups.
- This option was not supported by Lancashire Fire and Rescue Service.
- This option was not supported by The Black Minority Ethnic (BME) Forum as part of the 2017 Fairhaven HLF consultation.
- Although the council has been successful in the stage 2 Heritage Lottery Fund application for Fairhaven Lake this was due in part to improved engagement with hard to reach users groups such as the BME community. If the council introduces a full prohibition on barbecues which impacts adversely on a protected characteristic group it could be criticised by the Heritage Lottery Fund for doing so.
- The assessment at section 36 identifies that people from the BME community would be disproportionately disadvantaged, which would constitute indirect discrimination unless the council could demonstrate that a full prohibition is a proportionate means of achieving one or more legitimate aims.

OPTION B - PARTIAL PROHIBITION OF BARBECUES WITH MANAGED BARBECUE ZONES

25. Partial prohibition of barbecues on council owned land through the application of a Public Spaces Protection Order with the provision of managed barbecue zones in designated locations. There would be an exemption to the prohibition where the council has given express prior consent, e.g. for a particular use/event. The order would apply to the list of sites as shown in the schedule at Appendix 2, except for two proposed designated barbecue areas:

- An area within Fairhaven Lake
- An area on St Annes beach opposite North Promenade car park

OPTION B - Benefits:

- Positive and proactive response to an issue which has divided public opinion – rationalising use to certain designated areas.
- From the two consultations 68% supported the provision of designated barbecue locations

- Rather than requiring areas to be policed under threat of sanction, it is anticipated that the provision of appropriate signage, fire retardant furniture and disposal bins for barbecues and associated waste would strongly encourage barbecue users to gravitate towards designated zones.
- Barbecue zones could be piloted to test success rate and be the first step of a phased approach to minimise anti-social behaviour.
- Prevents discouragement of existing visitors or new sectors of the community from enjoying Fylde's public open spaces.
- Approach supported by key stakeholders including Friends of Fairhaven Lake, Fairhaven HLF Board, BME Forum, Lancashire Fire and Rescue, Heritage Lottery Fund and the Green Flag Award scheme through Keep Britain Tidy.
- A PSPO would be adopted to protect and enable enforcement on non-designated barbecue areas and to protect statutory coast and ecological sites.
- Prevents physical damage to all public open space landscape and infrastructure.
- Provides officers a clear and positive basis for enforcement as well as the diversion of barbecue activity to a designated zone.
- May minimise negative publicity.

OPTION B - Challenges:

- There is no guarantee the provision of designated barbecue zones will eradicate all anti-social behaviour and damage, though are likely to minimise the volume of negative enforcement.
- Restrictions on the operation of barbecues in designated areas would need to be specified in the Order, e.g. only charcoal barbecues which are raised off the ground could be used, restrictions on the time barbecuing is allowed, etc..
- Careful consideration will need to be given to the location and design of barbecue zones to ensure appropriate use, popularity and success.
- There will be an initial capital cost to provide the designated areas and an ongoing maintenance resource for grounds maintenance staff in the upkeep of the new barbecue zones as well as the enforcement resource to ensure barbecues take place only in the designated areas.
- The consultation results cannot of themselves establish that the stipulations in the 2014 Act are satisfied. The stipulations are that the activity to be controlled has had a detrimental effect on the quality of life of those in the locality, is (or is likely to be) of a persistent or continuing nature, is unreasonable, and justifies the restrictions to be imposed.
- Negative image of the council from issuing Fixed Penalty Notices to residents/visitors who are using barbecues, any engagement would be potentially confrontational because of the need to enforce restrictions on an activity – though some mitigation because there is an alternative offered.
- A publicity campaign and signage would be required to ensure the new policy is communicated effectively and legally enforceable. This would have a cost implication. Such a campaign could place strong emphasis on the positive benefits to all users (users and non-users of barbecues alike) in ensuring that both users and non-users of barbecues now have their own spaces to freely enjoy.
- The geographically selective PSPO would still apply to a large geographical area and could make enforcement challenging and expensive.
- The assessment at section 36 identifies that people from the BME community would be disproportionately disadvantaged, which would constitute indirect discrimination unless the council could demonstrate that a partial prohibition with designated and managed barbecue zones is a proportionate means of achieving one or more legitimate aims.

OPTION C - INTRODUCTION OF ADVISORY GUIDELINES

26. The introduction of advisory guidelines, publicity and signage for using barbecues safely and responsibly. This option proposes an advisory approach through education and publicity to encourage users to barbecue responsibly. It would include a 'code of practice' to advise which barbecues are acceptable and which are not and which areas where the use of barbecues is not acceptable i.e. sand dunes and nature reserve. It would include proactive signage and fire resistant bins at key locations which have in the past been used for barbecues and be backed by online information for users considering visiting Fylde's parks and open spaces.

OPTION C - Benefits:

- Positive and proactive response to an issue which has divided public opinion – ‘communication not confrontation’.
- Rather than requiring areas to be policed under threat of formal sanction, it is anticipated that the provision of clear appropriate rules and signage, would encourage barbecue users to barbecue responsibly.
- Existing employee resources can be used for the advisory role with no enforcement with fixed penalty notices.
- From the two consultations 68% supported designated areas which could be included as part of the advisory approach.
- The introduction of advisory guidelines could be piloted to test success rate and be the first step of a phased approach to minimise anti-social behaviour - allows the opportunity to introduce further measures through PSPO enforcement if after review this measure is not sufficient
- Provides the opportunity for further assessment and evidence gathering to support any future PSPO application
- Prevents any discouragement of existing visitors or new sectors of the community from enjoying Fylde’s public open spaces.
- This approach likely to be supported by key stakeholders as an incremental approach to addressing the issue.
- This approach could help prevent physical damage to all public open space landscape and infrastructure.
- Provides a positive basis for any future enforcement.
- A more customer focused approach that allows for compliance and more productive engagement with the customer.
- Significantly less revenue cost implication without the need to commission formal enforcement resources.
- Would minimise negative publicity.
- There is unlikely to be any disproportionate impact on members of the BME community from this option.

OPTION C - Challenges:

- Guidelines are not legally enforceable, so there is no guarantee this approach will eradicate anti-social behaviour or some damage, though it will minimise the volume of negative enforcement.
- A publicity campaign and signage would be required to ensure the new policy is communicated effectively. This would have a cost implication. Such a campaign could place strong emphasis on the positive benefits to all users (users and non-users of barbecues alike) in ensuring that both users and non-users of barbecues are able to enjoy the council’s parks and open spaces responsibly.
- Restrictions on the type of barbecues will need to be specified in publicity so that users were clear which types of barbecues were encouraged and which were discouraged, i.e. only charcoal barbecues which are raised off the ground should be used, e.g. kettle type barbecues permitted, no disposable barbecues allowed, no gas barbecues allowed, etc.
- Restrictions on the locations which should not be used for barbecues will need to be specified, e.g. not in the sand dunes and nature reserve.
- There will need to be some additional resource allocated towards ensuring the guidelines for responsible barbecuing were being followed. This would not be as costly as enforcement of a PSPO and less confrontational.

OPTION D - CURRENT POSITION/NO CHANGE

27. Current position, no regulations, legislation or advisory guidelines in place to prohibit or manage barbecues on Council land. No change to the existing position with a view to reviewing the options after gathering data and evidence for another season

OPTION D - Benefits:

- The lowest cost option as it doesn’t require any up front capital expenditure or any additional ongoing revenue expenditure.

- Provides the opportunity for further assessment and evidence gathering to support any future PSPO application.

OPTION D - Challenges:

- This option is not a proactive measure to deal with the issues experienced by users of parks and open spaces in relation to barbecues.
- This approach would not help prevent physical damage to all public open space landscape and infrastructure, although this has been limited over the last few years.

IMPLICATIONS

LEGAL/ENFORCEMENT

28. Breaching the PSPO would result in the issuing by a council officer (or person appointed by the council to undertake enforcement) or police officer of a Fixed Penalty Notice (FPN). From experience in other enforcement regimes introduced by local authorities the Police are unable to allocate priority or resources to support enforcement of the PSPO unless as a result of issuing a fixed penalty notice there are incidents of public disorder i.e. physical assault. If members decided to apply a PSPO prohibiting barbecues they would need to also decide the level of the Fixed Penalty that would be applicable. The fixed penalty could be up to £100.
29. Enforcement of this would fall to a person authorised and appointed by the council to undertake this role who has the required skill set, temperament and experience. Dependent upon the point at which an officer approaches someone involved in the lighting of a fire, barbecue or stove it could be that cooking had commenced and that there was a group of people involved some of whom may have consumed alcohol. Indeed some barbecues that have been held appear to be attended by groups of up to around 20 people.
30. Enforcement will need to be undertaken in accordance with an agreed enforcement protocol which assists officers when and how to consider the issuing of a fixed penalty notice and how to deal with instances where there are large groups, individuals withholding information to identify themselves or become aggressive. There is also the attendant risks that lone working out of normal hours presents itself. As a result formal enforcement will need to be undertaken by a minimum of two officers who are trained in enforcement and authorised to issue FPN's with appropriate back-up protocols, this will increase the cost of enforcement because of the need to engage an external agency to carry out the enforcement.
31. The enforcement of a PSPO prohibiting barbecues, will require additional resources and would be focused during the summer months and include commissioning resources outside of normal working hours, e.g. evenings and weekends.
32. The issuing of Fixed Penalty Notices to residents/visitors who are found by enforcement officers to be using barbecues is likely to present a negative image of the council and may impact on its reputation. Engagement with the customer will on occasions be adversarial or confrontational because the PSPO is prohibiting an activity in a given desirable location without any alternative (Option A).
33. Enforcement of option B (with two managed designated zones to direct users to) could be less confrontational because designated areas offer an alternative option and therefore less resource intensive than option A. However only experience of operating such an option would confirm this, so for the sake of simplicity and comparison the financial appraisal assumes the same level of enforcement is undertaken and the same costs are incurred with both Options A and B. If Option B was selected the level of enforcement could be reviewed after year 1.

FINANCIAL

34. The financial implications of each option are set out in table 2 below. In each option it is assumed that any additional on-site signage or publicity would be funded from the £60,000 'Coastal Signage Improvements' capital project which is proposed as part of the 2019/20 budget.
35. In Options A and B where it is proposed to introduce a PSPO to control the use of barbecues it identifies the resources necessary for effective enforcement.

Option	Option description	Capital implications and cost	Annual revenue implications and cost
A.	Full prohibition of barbecues and other outdoor temporary cooking facilities on council land, through the application of a Public Spaces Protection Order	£0	Security patrol (2 enforcement officers covering all sites) -average 8 hours per day– 7 days per week – Easter– 1 st Sept. Includes training, transport, uniform (incl body cams) and equipment. Estimated cost £38,000 per annum
B.	Partial prohibition of barbecues and other outdoor temporary cooking facilities on council land, through the application of a Public Spaces Protection Order with the provision of managed barbecue zones in designated locations	14 fire resistant picnic benches - £9,000 14 fire resistant bins - £5,100 (benches and bins at Fairhaven Lake and on St Annes beach opposite North Promenade car park) Total cost £14,100	Security patrol (2 enforcement officers covering all sites) -average 8 hours per day– 7 days per week – Easter– 1 st Sept. Includes training, transport, uniform (incl body cams) and equipment. Estimated cost £38,000 per annum
C.	The introduction of advisory guidelines, publicity and signage on council land for using barbecues safely and responsibly	14 fire resistant picnic benches - £9,000 30 fire resistant bins - £11,000 (benches and bins at Fairhaven Lake and on St Annes beach opposite North Promenade car park and bins at key locations which in the past been used for barbecues) Total cost £20,000	£0
D.	Current position, no regulations, legislation or advisory guidelines in place to prohibit or manage barbecues on council land	£0	£0

Table 2 – Financial implications of each option

EQUALITY

36. Direct discrimination occurs if a person is treated less favourably than another person would be because of a protected characteristic. Indirect discrimination occurs where a provision, criterion or practice that is applied to all puts persons who share a protected characteristic at a particular disadvantage when compared with persons who do not share the protected characteristic, and the provision, criterion or practice cannot be shown to be a proportionate means of achieving a legitimate aim². “Protected characteristics” include race and religion.
37. Based on observations by council staff the proportion of people using barbecues or open cooking on council land who appear to be from the BME community is significantly greater than the proportion of Fylde residents or visitors to Fylde who are from that community.
38. In considering each option, the committee will need to consider whether the option would place persons who are from the Black Minority Ethnic community at a particular disadvantage compared with persons who are not from the Black Minority Ethnic community. If such a particular disadvantage would arise, the committee will need to consider whether choosing the option would be a proportionate means of achieving a legitimate aim. If the option would not be a proportionate means of achieving a legitimate aim, it would not be lawful to choose that option.

² [Equality Act 2010 Section 19](#)

39. In exercising its functions, the council must have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
 - Advance equality of opportunity between people who share a protected characteristic and those who do not; and
 - Foster good relations between people who share a protected characteristic and those who do not.
40. Having due regard for enhancing equality involves removing or minimising disadvantages suffered by people due to their protected characteristics and taking steps to meet the needs of people from protected groups where these are different from the needs of other people. Fostering good relations means tackling prejudice and promoting understanding between people from different groups. Complying with the duty may involve treating some people more favourably than others.
41. If the Council fails to have “due regard” to the matters identified above, it would fail to comply with its statutory duty.
42. If, as stated, the proportion of people using barbecues or open cooking on council land who are from the BME community is significantly greater than the proportion of Fylde residents or visitors to Fylde who are from that community, a prohibition is likely to put the BME community at a particular disadvantage when compared to people who are not from the BME community.
43. Option A proposes a full prohibition and given that no alternative is offered this impact is not mitigated. This would constitute indirect discrimination unless the council could demonstrate that a full prohibition is a proportionate means of achieving one or more legitimate aims.
44. Option B proposes a partial prohibition with the provision of two designated managed barbecue zones which provides some mitigation of indirect discrimination. This would also constitute indirect discrimination unless the council could show that a partial prohibition with designated and managed barbecue zones is a proportionate means of achieving one or more legitimate aims.
45. Option C proposes an advisory approach based on the adoption of a code of good practice. Providing users (including those from the BME community) follow this code there should be little if any impact. In fact it has been observed that users from the BME community are more likely to bring their own barbecue equipment rather than use disposable ones which are the main cause of potential damage to parks infrastructure.
46. Option D proposes no change so the impact on the interests of the BME community would be neutral, as their circumstances would be unchanged from the present.
47. Members may feel the existing problem of barbecues is so severe that it requires a full prohibition through the adoption of a PSPO, but members will need to consider whether this is a proportionate response given the additional costs and the impact on users from the BME community.

CONCLUSION

48. Measures taken to address concerns regarding the use of barbecues should be balanced against the commitment of Fylde Council to promote, facilitate and maximise the positive public use of the borough's public open spaces for both residents and visitors. Guiding this commitment is an overarching aim to create an atmosphere of permission rather than prohibition i.e. an emphasis on promoting responsible use, rather than prohibiting negative use of spaces. Many parks offer a variety of facilities and involve all user groups as part of the solution where possible and work hard to avoid single-group dominance.
49. Any decision on barbecue usage must be balanced against the needs of other users of Fylde's open spaces. The PSPO and Fairhaven HLF Stage 2 bid consultations (although not conclusive) indicate that Fylde attracts a wide variety of users, who utilise the space for varying activities and reasons, including for pleasure, walking, socialising, relaxing, events, picnics and barbecues.
50. There is some evidence and support to suggest the council should address the issue of barbecues specifically on Fairhaven Lake, Lytham Green and Fylde Sand Dunes. No documented complaints have been formally raised for any location other than Fairhaven Lake since March 2017. Furthermore, strong support is indicated for the introduction of barbecue free areas alongside designated barbecue areas.

51. It is also important for members to note that a blanket ban is not preferred as the appropriate response for site specific problems by local stakeholders or national bodies including the Fire and Rescue Service, Friends of Fairhaven Lake, the Heritage Lottery and Keep Britain Tidy.
52. If formal control of barbecues through enforcement is considered necessary then the most effective legal mechanism for this would be a PSPO as the use of bye-laws require prosecution through the courts on a case by case basis.
53. It should be noted that a Public Spaces Protection Order to prohibit barbecue activity (whether in full or with designation areas) would require additional resources to properly enforce it which are set out in the report. It will also require the introduction of new enforcement procedures and protocols to guide when and how to consider issuing of fixed penalty notices.
54. An alternative to taking formal action could be to introduce a set of advisory guidelines which set out advice on how users can safely and responsibly have a barbecue without causing damage or harm. This can be achieved by existing council staff engaging with users if they were seen not be following the code of practice to encourage a more responsible approach. This option provides a staged approach towards better management of barbecues on council parks and open spaces. Members may feel this approach provides a logical progression from where the council currently is, but recognise that enforcement could not be undertaken formally.
55. Finally Option D assumes no different approach to that currently employed. It would mean that open spaces could be prone to some damage and misuse from individuals using barbecues inappropriately, although over the last few years the direct cost attributed to barbecue related damage is only £1,362.

IMPLICATIONS	
Finance	Some of the options that are described within this report will have financial implications if adopted. If members choose to adopt any of these options the committee will need to recommend that an unfunded revenue and/or capital budget increase is approved by Council in order to implement the policy that is adopted.
Legal	The adoption of a PSPO prohibiting barbecues (Options A and B) will aid enforcement. The legislation stipulates that PSPO's must be subject to regular review. New orders should ideally be reviewed after a year and thereafter PSPO's must be reviewed triennially.
Community Safety	All proposed options have considered and will practically address community safety concerns.
Human Rights and Equalities	<p>Direct discrimination occurs if a person is treated less favourably than another person would be because of a protected characteristic. Indirect discrimination occurs where a provision, criterion or practice that is applied to all puts persons who share a protected characteristic at a particular disadvantage when compared with persons who do not share it and the provision, criterion or practice cannot be shown to be a proportionate means of achieving a legitimate aim³.</p> <p>"Protected characteristics" include race.</p> <p>It is observed that a significant number of those who use barbecues or open cooking on council land are from the Black Minority Ethnic (BME) community. In considering each option, the committee will need to consider whether the option would place persons who are from the BME community at a particular disadvantage compared with persons who are not from the BME community. If such a particular disadvantage would arise, the committee will need to consider whether choosing the option would be a proportionate means of achieving a legitimate aim. If the option would not be a proportionate means of achieving a legitimate aim, it would not be lawful to choose that option.</p> <p>In exercising its functions, including its functions as a local planning authority, the</p>

³ [Equality Act 2010 Section 19](#)

	<p>council must comply with the Public Sector Equality Duty. This means having due regard to the need to: (i) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010; (ii) Advance equality of opportunity between people who share a protected characteristic and those who do not; and (iii) Foster good relations between people who share a protected characteristic and those who do not.</p> <p>Having due regard for enhancing equality involves removing or minimising disadvantages suffered by people due to their protected characteristics and taking steps to meet the needs of people from protected groups where these are different from the needs of other people. Fostering good relations means tackling prejudice and promoting understanding between people from different groups. Complying with the duty may involve treating some people more favourably than others.</p> <p>If the Council fails to have “due regard” to the matters identified above, it would fail to comply with its statutory duty.</p> <p>Given the disproportionate impact of introducing a PSPO on members of the BME community, the committee will need to be satisfied that it has identified the legitimate aim for the order and that the order is a proportionate means of achieving it. Unless the committee is satisfied that it can demonstrate that consideration without one, it would be necessary to commission an Equalities Impact Assessment for it to consider before going ahead with that option.</p>
Sustainability and Environmental Impact	The proposed options are aimed at encouraging people to act responsibly towards the environment whilst using public open spaces. Smoke pollution has been highlighted as a concern, however the impact of this is likely to be negligible.
Health & Safety and Risk Management	Better management of barbecues on parks and open spaces is needed to reduce the risk people and council assets.

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BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Local Government Association Public Spaces Protection Orders Guidance for Councils.	February 2018	Local Government Association Public Spaces Protection Orders Guidance for Councils.
PSPO survey responses	Aug/Sept 2018	Parks, Leisure and Cultural Services, Town Hall
Feedback from other councils	January 2019	Parks, Leisure and Cultural Services, Town Hall

Attached documents:

Appendix 1 –Public consultation survey data September 2018 re Proposed PSPO to prohibit BBQ’s and open fires

Appendix 2 – List of sites which would be covered by a Public Space Protection Order to control barbecues and outdoor cooking on council owned land