

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT SERVICES DIRECTORATE	TOURISM AND LEISURE COMMITTEE	7 JUNE 2018	5
PROPOSALS FOR THE CONTROL OF BARBECUES, OUTDOOR COOKING AND OTHER FORMS OF FIRE ON COUNCIL OWNED LAND			

PUBLIC ITEM

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

SUMMARY

This report outlines options to control the use of barbecues, outdoor temporary cooking facilities and other forms of fire on council owned land, mitigating risk to the public and damage to council property.

RECOMMENDATIONS

To consider the options proposed within this report to either control or prohibit the use of barbecues, outdoor cooking and other forms of fire on council land.

Option A: Full prohibition of barbecues and open fires on coastal parks and open spaces, ecological sites and beaches as identified in the consultation process, through the application of a Public Spaces Protection Order.

Option B: Full prohibition of barbecues and open fires on coastal parks and open spaces only, as identified in the consultation process, through the application of a Public Spaces Protection Order.

Option C: Provision of designated, managed barbecue zones, with selective prohibitions applied to all other areas enforced either through;

- formal enforcement by the application of a Public Spaces Protection Order (PSPO), or
- less formal enforcement undertaken on a trial basis to confirm effectiveness.

SUMMARY OF PREVIOUS DECISIONS

Tourism and Leisure Committee – 22 June, 2017

1. To carry out consultation on the introduction of a Public Spaces Protection Order (PSPO) 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 St Anne's on Sea.
2. That the committee approve the erection of temporary advisory signage preventing the use of barbecues, outdoor cooking facilities and other forms of fire at key locations as identified 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 and elected members received public complaints in 2017 regarding barbecues and outdoor cooking activities on public open spaces. Recorded complaints have referred specifically to barbecue activity in three geographical locations including Fairhaven Lake, Fylde Sand Dunes and Lytham Green. Concerns have included fire damage to park furniture and grass areas, smoke pollution, food odours, littering and safety hazards relating to open fires on public open spaces.
2. The complaints resulted in a review of the council's position and it was identified that there are no regulations or legislation in place to help manage or prohibit barbecues on council owned land. There are also no designated, safe areas that allow people to barbecue without potentially causing nuisance to others. The Tourism and Leisure Committee requested a report outlining details on the current issues, legal options available and methodology for measures.
3. The report *Prohibition of Barbecues, Outdoor Cooking and other forms of Fire on Council Owned Land*, was presented to the Tourism and Leisure Committee on the 22nd June 2017. Following consideration members resolved to carry out a borough wide public consultation 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 Parks and Coastal Services team were requested to feed back the outcome of the consultation to the committee at the appropriate time.

CONSULTATION PROCESS

4. A consultation framework was developed in adherence to the *Local Government Association Public Spaces Protection Orders Guidance for Councils*. 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.
5. The consultation is an essential component of satisfying 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 consultation timeline and process followed is outlined below:
 - Press release issued 30th October, 2017 to Gazette and Lytham St Annes Express. 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 1st November, 2017 for a period of 4 weeks.
 - Paper copy surveys made available at Town Hall and Fairhaven Lake.
 - Public consultation survey results and comments compiled and evaluated December 2017.
 - Statutory consultation undertaken with Lancashire County Council, Police and Crime Commissioner and Lancashire Fire and Rescue in January 2018.
 - Neighbouring council consultation to identity a benchmark for comparison in May 2018.
 - Desk top study of national approaches, best practices and lessons learnt in May 2018.

CONSULTATION RESULTS

6. The public consultation results can be found in Appendix 1. A total of 125 respondents completed the survey, both online and in writing although some questions were skipped by some respondents. A summary of the results is shown below. The survey showed a majority of 59.20% respondents felt that barbecues were a problem, however 56.78% did not feel barbecue activity impacted their visit. The most popular method for control was the introduction of a PSPO although this is not a majority of the respondents (44.00%), followed by controlled, designated areas.

Questions	Numbers	Percentages
Do you feel BBQ's or open fires a problem on Fylde's Public Open Spaces?		
Yes	74	59.20%
No	51	40.80%
Do you feel BBQ's or open fires have impacted your visit?		
Yes	55	43.22%
No	68	56.78%
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%
Object PSPO proposal	31	24.80%
Support use with control	39	31.20%
If they are to be controlled, what potential methods would you support?		
Location restrictions	41	33.07%
Time restrictions	8	6.45%
Dedicated BBQ spaces only	75	60.48%

7. The Appendix 1 attached lists all the qualitative comments made by respondents to the public consultation which should be read alongside the above quantitative results.
8. The statutory consultation produced one response from Lancashire Fire and Rescue. They advised a moderate, community minded approach, providing designated barbeque areas that are well maintained and monitored by council officers and Police Community Support Officers.
9. 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. A key objective of the BME Forum is to support consultation and co-ordinate 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.
10. Consultation with neighbouring councils to determine variables in approaches across West Lancashire revealed that control or prohibition of barbecues wasn't a high priority overall. The authorities consulted were as follows:
- 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.
 - 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.
11. A desktop study of national authority approaches was also undertaken, revealing a wide variety of policies in response to increasing incidents of barbecues in the councils where there has been action taken. The main three approaches identified were as follows:

- Blanket borough wide barbecue and open fires prohibitions on public open spaces through enforced bye-laws or PSPO's.
- 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.
- Selective ban on disposable barbecues, but permitted portable reusable types.

LEGISLATION

12. 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 consultation indicated that the majority (56.78%) did not feel that barbecues had any impact on their visit. As part of the wider HLF consultation process the BME community responded that designated barbecue areas could provide the opportunity for cohesion and diversity.
13. 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'*.
14. If members wish 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 APPRAISAL

15. Further to evaluation of the consultation data and studies of methodologies used by other councils, Fylde Council has a number of options available for the control of barbecues on public open spaces. To enable a proportionate and measured response, the benefits and challenges of each option are outlined for members to consider when making a decision.
16. **Option A:** Full prohibition of barbecue and open fires on coastal parks and open spaces, ecological sites and beaches as identified in the consultation¹, through the application of a Public Spaces Protection Order.

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.
- Some residents supported a blanket ban.
- Provides officers a clear basis for enforcement and enables fix penalties to be issued for persistent anti-social behaviour.

Challenges:

- The consultation results may not satisfy the stipulations in the Section 59 2014 Act requirements. 56.78% of survey respondents stated that barbecues had no impact on their visit, in comparison to 43.22% respondents who stated that it had impacted their visit. The Act requirements are as follows:

Activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality/ The activities is, or is likely to be, of a persistent or continuing nature

¹ The area of parks, open spaces ecological sites and beaches 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](#).

or is likely to be, such as to make the activities unreasonable, and justifies the restrictions imposed by the notice.

- Negative publicity may be received if the council is perceived to implement a prohibition without consideration of a pilot or the provision of dedicated facilities.
- 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 challenged 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 Friends of Fairhaven Lake (FoFL) who are an important 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 an opinion on providing a designated barbecue area or not - during the board meeting on the 30th 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. Community engagement, education and provision of well-designed facilities to prevent anti-social behaviour are encouraged through the scheme. Prohibition is viewed as a last resort after all other options have been explored.
- This option was not supported by Lancashire Fire and Rescue.
- This option was not supported by The Black Minority Ethnic (BME) Forum.
- A blanket ban on Fairhaven Lake may affect the success of the stage 2 Heritage Lottery Fund application for Fairhaven Lake and Gardens which is due to be submitted by the end of July. This would be in respect of it having a negative impact on community engagement and a ban not being supported by key stakeholders (the Friends of Fairhaven Lake (FoFL) and the BME Forum) seen by the Heritage Lottery Fund as essential to have the support of to ensure a successful application.

17. **Option B:** Full prohibition of barbecue and open fires only on coastal parks and open spaces, as identified in the consultation, through the application of a Public Spaces Protection Order.

Benefits:

- Provides the council full authority to draft and implement prohibitions to target the specific problem in specific locations and apply to everyone in that locality.
- Prevents physical damage to park landscape and infrastructure.
- Some residents would support a blanket ban on parks and open spaces.
- Provides officers a clear basis for enforcement and enables fix penalties to be issued for persistent anti-social behaviour.

Challenges:

- Displacement of barbecue activity from parks and open spaces to beaches and sand dunes may occur, resulting in disturbance and damage to the borough's most sensitive sites and associated wildlife. The council has a statutory duty to protect Fylde Sand Dune Local Nature Reserve, Fylde Sand Dune Site of Special Scientific Interest and the Fylde Coast Special Protection Area.

- The consultation results may not satisfy the stipulations in the Section 59 2014 Act requirements. 56.78% of survey respondents stated that barbecues had no impact their visit, in comparison to 43.22% respondents who stated that it had impacted their visit. The Act requirements are as follows:

Activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality/ The activities is, or is likely to be, of a persistent or continuing nature or is likely to be, such as to make the activities unreasonable, and justifies the restrictions imposed by the notice.

- Negative publicity may be received if the council is perceived to implement a prohibition without consideration of a pilot or the provision of dedicated facilities. .
- Wide ranging publicity and signage would be required alongside new policies to ensure effective and legally enforceable. This would have a capital and ongoing revenue cost implication.
- A policy across a large geographical area makes enforcement challenging and more enforcement resource would be required to ensure compliance in the summer season. This would have an ongoing revenue cost implication.
- The Friends of Fairhaven Lake (FoFL) who are an important 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 an opinion on providing a designated barbecue area or not during the board meeting on the 30th 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 voted unanimously in favour of a designated barbecue area.
- A blanket ban may be contrary to the objectives of the Green Flag Award judges. Community engagement, education and provision of well-designed facilities to prevent anti-social behaviour are encouraged through the scheme. Prohibition is viewed as a last resort after all other options have been explored.
- This option was not supported by Lancashire Fire and Rescue.
- This option was not supported by The Black Minority Ethnic (BME) Forum.
- A blanket ban on Fairhaven Lake may affect the success of the stage 2 Heritage Lottery Fund application for Fairhaven Lake and Gardens which is due to be submitted by the end of July. This would be in respect of it having a negative impact on community engagement and a ban not being supported by key stakeholders (the Friends of Fairhaven Lake (FoFL) and the BME Forum) seen by the Heritage Lottery Fund as essential to have the support of to ensure a successful application.

18. **Option C:** Provision of designated, managed barbecue zones, with selective prohibitions applied to all other areas enforced either through;

- formal enforcement by the application of a Public Spaces Protection Order (PSPO), or
- less formal enforcement undertaken on a trial basis to confirm effectiveness.

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 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 or new bye-laws could 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.

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.
- Other policies including the restrictions on the use of gas canisters or alcohol within the designated zones may also need to be considered.
- 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.
- In the application of a PSPO in non-designated zones, the consultation results may not satisfy the stipulations in the Section 59 2014 Act requirements as described in Options A and B.
- 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 will make enforcement challenging.

CONCLUSION

19. Solutions to 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.
20. Any decision on barbecue usage must be balanced against the needs of other users of Fylde's 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 and picnics.
21. There is strong 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 or concerns have been

formally raised for any other public open spaces since March 2017. Furthermore, strong support is indicated for the introduction of barbecue free areas alongside designated barbecue areas.

22. It should be noted that a Public Spaces Protection Order to prohibit all barbecue activity could adversely impact upon usage particularly on Fairhaven Lake and would pose a difficult challenge in terms of resources available to support and enforce a ban. It is also important for members to note that a blanket ban is not preferred as the appropriate response for site specific problems by some local stakeholders or national bodies including the Heritage Lottery and Keep Britain Tidy.
23. If any form of control is considered the most effective legal mechanism for this would be a PSPO as the use of bye-laws require prosecution through the courts.
24. Whatever option is selected will require the introduction of new enforcement procedures and protocols which will include cost of advertisement, additional staffing resources to align with locations/timings of activity, use of technology for surveillance, i.e. CCTV/body cams, etc.
25. An alternative to taking formal action could be to create designated zones to be piloted on Fairhaven Lake on a less formal trial basis (i.e. without explicit threat of sanction if breached), accompanied by a high-profile campaign to publicise the introduction of these areas. 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 now have their own spaces to freely enjoy. Publicity could be used to let visitors know that this would be a trial and that any further issues/abuse could result in formal measures being introduced.

IMPLICATIONS	
Finance	All of the options that are described within this report would have financial implications if adopted. These would need to be confirmed following the decision of this committee, along with how that cost would be met. At this stage there are no financial implications arising directly from this report.
Legal	Whilst the council has the power to take forward further investigation of outlined options, detailed legal consideration has not yet been given to their viability and further work (as set out in the report) needs to be done. 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 aim².</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.</p> <p>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>

² [Equality Act 2010 Section 19](#)

	<p>In exercising its functions, including its functions as a local planning authority, the 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>The committee may consider it necessary to commission an Equalities Impact Assessment for it to consider before going ahead with its preferred option.</p>
Sustainability and Environmental Impact	<p>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. Use of a PSPO only on parks and open spaces may cause public displacement onto statutory ecological sites, resulting in the need for an Environmental Impact Assessment.</p>
Health & Safety and Risk Management	<p>All proposed options have considered and will adhere to the council’s health and safety and risk management policies and procedures.</p>

LEAD AUTHOR	CONTACT DETAILS	DATE
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BACKGROUND PAPERS		
Name of document	Date	Where available for inspection

Attached documents:

Appendix 1 – Proposed PSPO to prohibit BBQ’s and open fires - Public consultation survey data December 2017