

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	OPERATIONAL MANAGEMENT COMMITTEE	15 MARCH 2022	4
PUBLIC SPACES PROTECTION ORDERS 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

Public spaces protection orders are in place prohibiting barbecues and other outdoor temporary cooking facilities on council owned land across the borough under the Anti-Social Behaviour Crime and Policing Act 2014.

The areas covered by the individual orders are:

- Promenade Gardens
- Beach and sand dunes
- Lytham St Annes local nature reserve
- Mini links golf
- Ashton Gardens
- Car parks
- Fairhaven
- The Green
- Peace & Happiness Garden
- South Promenade
- St Annes Square

The activities identified in the orders are using barbecues or bringing barbecues into the prohibited area with a view to lighting them or cooking on them. Failure to comply with a PSPO is an offence which can be dealt with by a fixed penalty notice of £50 or by prosecution (maximum fine of £1000).

The orders are due to lapse during July 2022. Orders can be extended if they remain necessary to prevent certain persistent activities that are having a detrimental effect on the quality of life in the locality; this requirement is applicable to each of the locations covered by the orders.

The report asks members to consider whether they support an extension of the orders and proposes delegating the authority to do so to the Chief Executive, in collaboration with the Chairman, following mandatory consultation, publicity and notification, with the matter being referred to the committee for further consideration and final decision.

RECOMMENDATIONS

1. The Committee considers whether it is minded extending the public spaces protection orders described in the report for a further three years.
2. In relation to each order that the committee is minded extending, delegate authority to the Chief Executive, in collaboration with the Chairman, to carry out the necessary consultation, publicity and notification and to extend the order, unless the outcome of the consultation requires further consideration by the committee at a special meeting.

SUMMARY OF PREVIOUS DECISIONS

Council – 25, March 2019

Council approved an unfunded annual revenue budget increase of £38,000 from 2019/20 onwards to cover the cost of enforcement of a Public Spaces Protection Order to control the use of barbecues and other outdoor temporary cooking facilities.

Tourism and Leisure Committee – 14, March 2019

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

1. To introduce a full prohibition of barbecues and other outdoor temporary cooking facilities on council owned land through the application of a Public Spaces Protection Order; to set the level of the Fixed Penalty Notice at £50.
2. To recommend to Council an additional unfunded annual revenue budget increase of £38,000 to cover the cost of enforcement.

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 includes 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	
Economy – To create a vibrant and healthy economy	√
Environment – To deliver services customers expect	√
Efficiency – By spending money in the most efficient way	√
Tourism – To create a great place to live and visit	√

REPORT

1. Public spaces protection orders (PSPOs) are in place prohibiting barbecues and other outdoor temporary cooking facilities on council owned land across the borough under the Anti-Social Behaviour Crime and Policing Act 2014. The activities identified in the orders are using barbecues or bringing barbecues into the prohibited area with a view to lighting them or cooking on them. Failure to comply with a PSPO is an offence which can be dealt with by a fixed penalty notice of £50 or by prosecution (maximum fine of £1000) should individuals not be discouraged through other interventions. The areas covered by the individual orders are:
 - a. Promenade Gardens
 - b. Beach and sand dunes
 - c. Lytham St Annes local nature reserve
 - d. Mini links golf
 - e. Ashton Gardens
 - f. Car parks
 - g. Fairhaven
 - h. The Green
 - i. Peace & Happiness Garden
 - j. South Promenade
 - k. St Annes Square

2. Full details of the Public Spaces Protection Orders (PSPO) for the control of outdoor cooking fires in Fylde are available on the Council website at: [Fylde BBQ Control Measures](#)

CRITERIA FOR EXTENSION

3. The PSPOs were established under the Anti-Social Behaviour, Crime and Policing Act 2014 to address concerns with regards to the risks from barbeques and outdoor cooking.
4. The PSPOs commenced on July 1 2019 and, according to [statutory guidance](#), remain in force as PSPOs until July 1 2022, when they will lapse unless extended as described below.
5. PSPOs are not intended to remain in force indefinitely, but an order can be extended in duration for a further period of three years if it has not lapsed. A PSPO can be only extended if the authority is satisfied on reasonable grounds that two conditions are met:
6. The first condition is that:
 - a) activities carried out in a public place within the council's area have had a detrimental effect on the quality of life of those in the locality or
 - b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect

The second condition is that the effect, or likely effect, of the activities:

- c) is, or is likely to be, of a persistent or continuing nature,
 - d) is, or is likely to be, such as to make the activities unreasonable, and
 - e) justifies the restrictions imposed by the notice.
7. In deciding whether to extend a PSPO, the council is required to have regard to articles 10 and 11 of the European Convention on Human Rights and to comply with the Public Sector Equality Duty. Those matters are discussed further in the implications box for human rights and equalities at the end of the report.

PROCEDURE

8. Before extending a PSPO, the authority must carry out *“the necessary consultation the necessary publicity, and the necessary notification”*. The ‘necessary consultation’ means consulting with the Police and Crime Commissioner, any community representatives that the council considers it appropriate to consult i.e. fire service, environmental groups etc and (unless it is not reasonably practicable to do so) the owner of the affected land. The ‘necessary publicity’ means publicising the proposal. The ‘necessary notification’ means notifying the county council and any relevant parish council.
9. A decision to extend any of the PSPOs cannot be taken until representations made through consultation and publicity have been considered.
10. If members consider that the criteria for extension set out in paragraph 4 are met and are minded extending any of the PSPOs, it is recommended that authority be given to the Chief Executive, in collaboration with the Chairman, to carry out the consultation, publicity and notification, and extend the orders, if based on the outcomes of the consultation the CEO, in collaboration with the Chairman, feel the committee should consider the matter further, a special meeting would be arranged to decide whether to implement the relevant extension.

PERSISTENT ACTIVITIES HAVING A DETRIMENTAL EFFECT

11. The existence of the PSPOs have proved a successful deterrent against anti-social behaviour sometimes associated with barbeques and outdoor cooking such as damage to litterbins, park furniture and grassed areas from the heat and flames and the risk of injury to people stepping on discarded disposable BBQs covered by sand as well as heated sand where BBQs have been placed. There have been instances of serious injury to children as a consequence of disposable BBQs and there have been incidents of fires on public open space in Fylde.
12. Even with orders in place there are a small number of irresponsible individuals whose activities are having a detrimental effect on the quality of life of those in the locality, requiring extensive enforcement resource to discourage, extinguish and remove disposable BBQs and portable cooking equipment from many of the council areas covered by the existing orders.
13. Fylde experienced an influx of visitors and ‘staycationers’ over the past two summers following the lifting of the initial Covid-19 lockdown in 2020 and international travel restrictions. This led to an increase in anti-social behaviour from some visitors, including multiple breaches of the orders controlling outdoor cooking activities, placing increased demand on the busy coastal resource.
14. Approval was granted to set up a dedicated inhouse team of six enforcement officers over the 2021 summer period, responding to issues seven days a week, across all areas of the borough, including the popular coastal strip and open spaces covered by the PSPOs. However, because anti-social behaviour of this nature is also a concern for other partners within the Community Safety Partnership, there have been joint campaigns with the Lancashire Fire and Rescue Service to discourage BBQs and open flames during the peak summer period of dry, hot weather. The inhouse team was supplemented with resources from a private security firm, during 2021 while the team was being set up. The in-house team will provide the council’s enforcement resource during the 2022 season.
15. From the start of the peak holiday season in April through until the end of the October half term, enforcement staff interacted with people actively engaged in outdoor cooking activities and those in the process of setting up/intending to set up cooking equipment. While numbers varied, the popularity of barbecues and outdoor cooking fires was very weather dependent, with higher numbers observed in warmer weather, over weekends and during school holidays. Popular spots included the beach around S

tarr Gate, in the dunes to the north of the dog exclusion zone, in the dunes to the south of the beach huts and around Fairhaven Lake.

16. While most situations are successfully addressed through discouragement from the enforcement team including extinguishing and removing portable cooking equipment, there is the ability to fine those who persist in anti-social behaviour and / or refuse to comply with the order.
17. Recent experience and incidents support local concern that failing to extend the existing orders will result in an increase in the persistent and continuing anti-social behaviours and safety concerns traditionally associated with barbeques and outdoor cooking fires which have a detrimental effect on the quality of life for those in the locality. These concerns are echoed by other partners within the Community Safety Partnership.

IMPLICATIONS	
Finance	<p>Council (25/03/19) approved an unfunded annual revenue budget increase of £38,000 from 2019/20 onwards to cover the cost of enforcement of a Public Spaces Protection Order to control the use of barbecues and other outdoor temporary cooking facilities. Any future income adjustments for fixed penalty notices will be reflected in future updates of the financial forecast.</p>
Legal	<p>In deciding whether to extend a PSPO, the council is required to have regard to articles 10 and 11 of the European Convention on Human Rights and to comply with the Public Sector Equality Duty. These are discussed in turn below.</p> <p style="text-align: center;"><u>Human rights</u></p> <p>The requirement is in section 72 of the Anti-social, Crime and Policing Act 2014, and is to “have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the [European] Convention [on Human Rights]”. Those rights are:</p> <p style="text-align: center;"><i>ARTICLE 10 Freedom of expression</i></p> <p style="text-align: center;"><i>Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.</i></p> <p style="text-align: center;"><i>The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.</i></p> <p style="text-align: center;"><i>ARTICLE 11 Freedom of assembly and association</i></p> <p style="text-align: center;"><i>Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.</i></p>

	<p><i>No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.</i></p> <p>There is no evidence to suggest that anything in the present orders engages any of the rights guaranteed by articles 10 or 11.</p> <p><u>Public Sector Equality Duty</u></p> <p>Section 149 of the Equality Act 2010 requires a public body, in the exercise of its functions, to have due regard to the need to:</p> <p><i>(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;</i></p> <p><i>(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;</i></p> <p><i>(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.</i></p> <p>This may, but need not, include conducting an equality impact assessment of a proposed action. However, an equality impact assessment will almost always be necessary in order to demonstrate that the duty has been complied with if an action impacts more on persons who have a particular protected characteristic than those who do not.</p> <p>If experience from the operation of the present orders indicates that the prohibited activity is or would be carried on by a disproportionately high number of individuals from a particular racial group, it would be prudent to carry out an equality impact assessment to enable regard to be had to the matters listed in (a) to (c) above, as required by the duty.</p>
Community Safety	No Community Safety implications arising from this report
Human Rights and Equalities	No Human Rights and Equalities implications arising from this report
Sustainability and Environmental Impact	No Sustainability and Environmental implications arising from this report
Health & Safety and Risk Management	No Health & Safety and Risk Management implications arising from this report

LEAD AUTHOR	CONTACT DETAILS	DATE
Kathy Winstanley	mailto:Kathy.winstanley@fylde.gov.uk Kathy.winstanley@fylde.gov.uk ; 01253 658634	01/03/2022

BACKGROUND PAPERS

Name of document	Date	Where available for inspection
N/A		