

Cabinet

30 June 2020

Options for Prohibiting the Use of Disposable Barbeques

For Decision

Portfolio Holder: Cllr R Bryan, Highways, Travel and Environment

Local Councillor(s): All

Executive Director: John Sellgren, Executive Director of Place

Report Author: Grace Evans
Title: Head of Legal Services
Tel: 01305 225021
Email: grace.evans@dorsetcouncil.gov.uk

Report Status: Public

Recommendation:

That working with Dorset and Wiltshire Fire and Rescue and other partners the Cabinet:

1. Authorise officers to proceed with detailed work to establish an options paper that looks at both the legislative as well as other alternatives available to control or prohibit barbeques and other fire related activities relating to Dorset Council area.
2. Continue to support, until any further formal measures are put in place, the ongoing publicity campaign throughout the summer months in conjunction with partners. This will include the continued use of targeted signage at certain locations as well as supporting a range of social media campaigns

Reason for Recommendation:

To protect:

- Dorset's habitat, ecology and wildlife
- Human health
- Dorset Council's and private property
- And to support the safety of Dorset's emergency services and DC staff

1. Executive Summary

There have been a number of incidents of fire damage across Dorset as a result of the use of and/or disposal of barbeques or other social activity and of people having bonfires close to dry wooded and heathland areas.

The most serious of these incidents has been the [recent fire at Wareham Forest](#) which affected 180 hectares of heathland and was declared a major incident by the Fire and Rescue Service.

Concern about these fires has resulted in questions being raised about the Council's role in helping to prevent incidents like this occurring.

This report seeks approval for a group of Dorset Council officers, linking with the Fire and Rescue Service and other key stakeholders to proceed with detailed work to look at the range of options to prohibit or control the use of BBQ's and other sources that cause fire. This work will establish grounds and ensure legislative criteria can be met for each option, for example the introduction of a Public Spaces Protection Order (PSPO) or other measure to prohibit or control the use of barbeques, outdoor cooking on gas or charcoal fuelled facilities and other forms of fire on designated land within Dorset.

A summer communication campaign, co-ordinated with the Fire and Rescue Service, will help in the interim and spread the message regarding the risks around the use of disposable barbeques and of lighting fires and the potential wider impact in the Dorset Council area throughout the summer months.

2. Financial Implications

There are no direct financial implications as a result of carrying out this initial work however there will be both financial and staff resource implications for the development and implementation of a PSPO or alternative measures and its subsequent enforcement. These will be detailed in the future options report.

3. Climate implications

Wildfires emit carbon dioxide and other greenhouse gases that contributes to climate change. They also damage forests, woodlands and scrub that would otherwise remove CO2 from the air.

4. Other Implications

None

5. Risk Assessment

Having considered the risks associated with this decision, the level of risk has been identified as:

Current Risk: Low

Residual Risk: Low

There is little risk associated with carrying out the proposed options report. However, once options for the control of fire risk are chosen the desired outcome would be to significantly reduce or stop the potential for accidental fire starting. The risk of not doing this are potentially high with a threat to life, and significant financial and environmental implications. A concerted communications effort is low risk and would provide an opportunity to increase awareness of the issue providing an interim measure over the next few months.

6. Equalities Impact Assessment

- Not required for the options paper

7. Appendices

- Legislative definitions on options in moving forward

8. Background Papers

None

9. Introduction

9.1 This report has been prepared in response to a number of incidents of fire damage across Dorset as a result of the use of and/or disposal of barbeques; in particular the fires in Wareham Forest, on heathland and in public waste bins across Dorset.

9.2 [Statutory responsibility for promoting fire safety](#), including the provision of information, publicity and encouragement in respect of the steps to be taken to prevent fires and death or injury by fire rests with the Dorset and Wiltshire Fire and Rescue Authority. With its wider responsibilities the Council also has a role to play in helping to protect the public and Dorset's environment. The development of the options paper which this report recommends will enable us to understand how the range of powers open to the Council can work most effectively alongside those available to the Fire and Rescue Service and our other partners.

9.3 Elected members have requested a report to set out the options and legal process to prohibit the use of barbeques, which officers have expanded to include outdoor cooking and other forms of fire in the Dorset Council area. Certain provisions may be extendable to land not in council ownership to which the public have access.

9.4 This report outlines current legislation and prohibitions already in place and options which are available to the Council to prohibit or control the use of barbeques, outdoor cooking facilities and other forms of fire on Council owned land and other land to mitigate risk to the public, damage to property and the environment.

9.5 Safe alternatives for barbeques will need to be explored. People will still want to eat outdoors and some people will seek quieter more remote areas to have barbeques where they feel less likely to be seen. These areas are likely to be higher risk fire areas such as heathlands.

9.6 Any ban could lead to an increase in barbeques on land managed by some of the smaller charities such as Dorset Wildlife Trust or the Amphibian and Reptile Conservation Trust where PSPOs may not be in place and they may not have resources to enforce no barbeques. A consistent approach across the area is needed to find a range of solutions rather than concentrate the problem into smaller areas.

9.7 The Urban Heath partnership and Litter Free Dorset (two partnerships hosted by Dorset Council within the Environment Advice Team) are running a barbeque campaign to help reduce fires on Dorset Heathlands. The campaign provides shops and supermarkets near heathlands with resources to put with disposable barbeques as well as running a social media posts across a number of platforms - <http://www.litterfreedorset.co.uk/current-projects-and-campaigns/bbqs-burn-more-than-bangers/>

10. Current Legislation and other prohibitions

10.1 The Countryside and Rights of Way Act 2000 (CROW Act) Schedule 2 prohibits activities including that “a person cannot light or tend a fire or undertake any act which is likely to cause a fire.” The majority of heathland in Dorset is open access land. Dorset Council, (or where relevant the national park authority) oversees access rights under the CROW Act and may prohibit people from accessing land for 72 hours for failing to comply with Schedule 2 provisions.

10.2 The Wildlife and Countryside Act 1981 covers damage to a SSSI and a person found to have intentionally or recklessly caused destruction or damage can be prosecuted and fined. Dorset Council and/or Natural England may enforce these provisions and institute proceedings for any offence.

10.3 Existing Byelaws - Three Byelaws are currently in place, covering specified areas of Dorset only, which ban lighting of flames, fires and stoves; including the Forestry Commission, National Trust and Weymouth and Portland

area. Those organisations can monitor compliance. Non-compliance is an offence under each Byelaw, which can be enforced by the organisations and/or the Police and those found guilty can be fined. These could be actively enforced by the Council and those other organisations who have Byelaws in place. Natural England are currently consulting on a new Byelaw to protect areas of SSSI, which includes a prohibition on use of barbeques and stoves in those areas.

10.4 The Council's options for prohibiting or controlling the use of barbeques, outdoor temporary cooking facilities and other forms of fire on Council owned and other designated land include:

- Designation of a Public Spaces Protection Order
- Creation of a new Dorset Council Policy
- Creation of a new Dorset Council Byelaw

10.5 These and any other options which are identified, will be discussed in detail in the options paper which will also address the financial and staff resource implications and establish the pros and cons for each.

10.6 Alternatives to legislation will also be addressed in the options paper examples of which may include, having controlled barbeques areas at different locations, landowner civil law powers to control and influence behaviour and, in conjunction with the emergency services and landowners, promotion of community fire-watch schemes at sensitive locations for example Urban Heath Partnership's, Dorset FireWise programme.

10.7 In preparing an options paper Dorset Council officers will engage with other stakeholders, landowners, partner organisations, emergency services, organisations with existing byelaws, interested groups and organisations including neighbouring local authorities.

11. Recommendation/Conclusion

Working with Dorset and Wiltshire Fire and Rescue and other partners the Cabinet is asked to:

- Authorise officers to proceed with detailed work to establish an options paper that looks at both the legislative as well as other alternatives available to control or prohibit barbeques and other fire related activities relating to Dorset Council area.
- Support until any further formal measures are put in place, an extensive publicity campaign throughout the summer months in conjunction with

partners. This may include the use of targeted signage at certain locations as well as supporting a range of social media campaigns.

Footnote:

Issues relating to financial, legal, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.

Appendix 1

Legislative definitions on options in moving forward

The following provides details on:

a) Public Spaces Protection Order (PSPO)

1. PSPO's are made under Section 59 Anti-social Behaviour, Crime and Policing Act 2014.
2. Officers consider that a PSPO could be the most effective method of formal control that the Council could put in place to control the use of barbecues and open fire cooking in Dorset. An Order can be made if a Council is satisfied, on reasonable grounds, that two conditions are met, 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.
3. And, the effect, or likely effect, of the activities—
 - a. is, or is likely to be, of a persistent or continuing nature,
 - b. is, or is likely to be, such as to make the activities unreasonable, and
 - c. justifies the restrictions imposed by the notice.
4. A PSPO may apply to all persons, to persons in a specified category or to all persons except those in specified categories. They can prohibit specified things being done in the restricted area, specify things to be done by persons carrying on specified activities in that area, or do both of those things.
5. Unlike Policies, non-compliance with a PSPO amounts to an offence. PSPOs are enforceable by the council by the issue of fixed penalty notices or prosecution. Authorised council officers may issue FPN's and the council may authorise suitably trained officers from other bodies to enforce the provisions.
6. PSPO's expire after three years but can be extended for a further three years if the Council considers it necessary to prevent the original behaviour from occurring or recurring.
7. Before making a PSPO, the Council must consult the police and any community representatives the Council considers appropriate. Legislation

does not specify the period of consultation for a PSPO. Earlier PSPO consultations have tended to be for a period of 3 months.

8. The Council will need to consider the resources required to enforce the provisions of a PSPO whether declared on council land; other land to which the public have access or both. Land can be extensive and the ability of the council to resource this activity will be an issue that needs consideration.
9. A PSPO can only impose prohibitions in an area where the activities have had a detrimental effect. The Council may make a whole Dorset PSPO and within it identify each specific public place which together would form the restricted area. The alternative approach would be, to make a separate PSPO for each defined restricted area such as:
 - Woodland
 - Heathland
 - Country Parks
 - Beaches
10. PSPO Relationship with existing Byelaws - three Byelaws are currently in place across areas of Dorset, which already ban lighting of flames, fires etc. A PSPO could sit side by side with an existing Byelaw if they cover different areas. Where a PSPO overlapped with the area of an existing Byelaw, covering the same prohibited activity, the Byelaw would have no effect while the PSPO is in place. If a PSPO expired and was not renewed, the Byelaw that had been “suspended” would come back into effect.

b) Policies

11. DC do not have a policy regarding barbeques and fires. A policy would only typically apply to council owned land. Other policies might also be appropriate for example a sky lantern policy.

c) Bylaws

12. The accepted view is that Byelaws are the option of last resort. The process for approval is particularly lengthy, requiring consultation, submission to the Secretary of State for approval, further consultation and decision of Full Council. Confirmation is normally granted, but not necessarily quickly. The ‘fast track’ process, can only be used after satisfying specific and extensive requirements on consultation. Byelaws do not automatically expire.
13. A Council Byelaw can create an offence for non-compliance, which can be prosecuted in the Magistrates Court, and result in a fine on conviction.