

Appendix 1 – Required approach to the adoption of new byelaws

RE: Policy options for the boroughwide Prohibition of the Burning of Domestic and Garden Waste in the London Borough of Hammersmith & Fulham

Note: An English Devolution White Paper was published by the Secretary of State for Housing, Communities and Local Government in December 2024¹. This Paper outlined potential changes to rules surrounding the implementation of byelaws by local authorities². Officers will monitor any potential new legislation which would impact on the process for byelaws.

It is expected that a further report recommending the adoption of a byelaw will also include the following:

- The purpose of and need for the byelaw;
- By reference to a map where necessary, the land to which the byelaw if made would apply;
- The extent of the consultation that has been undertaken and the result of that consultation including a summary of the objections and responses (including all copies of correspondence dealing with such objections as an appendix)
- The reasons why the byelaw is reasonable in its proposed application, including why any sanction specified in the proposed byelaw is necessary and proportionate;
- Whether any other enactment already fulfils the purpose and if so why the byelaw is still needed or if not, that the proposal does not conflict with any existing enactments;
- That the guidance accompanying the model byelaws has been complied with;
- Whether the byelaws terms are from the model byelaw guidance and if so what (if any) adjustments are contained.

1. A public consultation to gauge support for any proposed new local byelaw will take place for a minimum of 12 weeks. This will be in the form of an online survey by H&F Have Your Say - our community engagement platform that will be publicised on the Council's Website.
2. The council in order to comply with the regulations for introducing new local byelaws under Section 285 of Local Government Act 1972 must prepare a draft of the proposed byelaw. Model byelaws may be useful in preparing the draft. The council shall have regard to the guidance notes accompanying the model byelaws when preparing byelaws.
3. The local authority must then undertake a regulatory assessment of the proposed byelaw to ensure that the proposed byelaw is proportionate. The regulatory assessment must include at least the following considerations:

¹ [English Devolution White Paper - GOV.UK](#)

² [Devolution White Paper: On-the-day factual briefing | Local Government Association](#)

- what is the objective of the proposed byelaw?
 - could the objective be achieved in any other way, short of a byelaw?
 - what will be the impact of the byelaw upon those affected by it?
 - will the proposed byelaw increase, or decrease, the regulatory burden imposed upon those affected by it, and can the local authority express this increase or decrease as a financial cost or benefit?
 - how does making the proposed byelaw compare with taking no further action?
4. After reviewing the results of the consultation, the council within 12 weeks from the end of the consultation shall prepare a statement of this consultation. The statement of the assessment shall include the following:
- the conclusions of the local authority about the impact of the proposed new byelaw on those affected by it
 - the conclusions of the local authority about whether or not the proposed byelaw will result in an increased regulatory burden
 - where the local authority considers that the proposed byelaw will result in an increased regulatory burden, the reasons why the local authority considers that increase to be proportionate and necessary.
 - The council will then publish the statement of the assessment on its website and provides copies to view at the councils four libraries.
5. The council must then submit their application to the Secretary of State for approval. The application should contain the draft proposed byelaw, the deregulatory statement and a report:
- identifying the enactment under which the byelaw is proposed to be made
 - confirming that the new, alternative procedure for making the proposed byelaw has been followed
 - explaining the purpose of, and need for, the byelaw
 - explaining the local authority's reasons why it considers the proposed byelaw is reasonable, and why the proposed sanction for contravening the byelaw is both necessary and proportionate
 - explaining whether or not any other existing enactment, law or legislation already fulfils the purpose of, and need for, the proposed byelaw
 - explaining why, if any other existing enactment, law or legislation already fulfils the purpose of, and need for, the proposed byelaw, the local authority still considers there is a need for the proposed byelaw
 - providing assurance that if it is the case that the local authority considers that no other existing enactment, law or legislation already fulfils the purpose of, and need for, the proposed byelaw, the proposed byelaw does not conflict with any existing enactments
 - explaining whether the local authority has used a model byelaw to help draft the proposed byelaw and if so, which one
 - identifying, by using a map if necessary, the area to which the byelaw applies
 - describing the result of the consultation
 - summarising any objections made to the proposed byelaw during the consultation exercise and the councils response to those objections; the

council will also include with the report copies of all correspondence dealing with the objections

The Secretary of State (SoS) must respond within 30 days to the council.

6. The SoS may give leave for the council to make the proposed byelaw, send an acknowledgment and give a substantive response at a later date, or refuse to give leave to the council to make the byelaw. The Secretary of State may request minor technical and formatting changes when giving leave to make the byelaw.
7. If the Secretary of State gives leave for the proposed byelaw to be progressed, the council then must give notice of the proposed byelaw. The notice shall identify the area to which the proposed byelaw will apply, give a summary of its intended effect, and specify where the proposed byelaw along with the council's assessment statement and the local authority's report on the proposed byelaw may be inspected. The notice shall state the consultation period, of not less than 28 days, within which the public may inspect the draft byelaws and also publish an address to which representations on the byelaws can be made within this period.
8. The council then shall consider all representations received over a minimum period of 90 days, including objections, before making any decision to adopt the proposed byelaw. It is for the council to determine how to proceed with any representations received.
9. Once the consultation period has expired, the council then has 6 months to decide whether or not to make the byelaw (with or without minor modification).
10. This 6-month period allows an adequate time for representations to be considered, for a council meeting to be arranged and a decision about whether to make the byelaws to be taken. A minor modification to a proposed byelaw is a modification that does not bring any new activity into the scope of the proposed byelaw or increase the scope of any prohibition or restriction on an activity.
11. Where a local authority decides that a more than minor modification is required to the byelaw, then that local authority is making a major modification and so essentially creating a new byelaw. Accordingly, if a local authority decides that a major modification is required to the byelaw it must recommence the byelaw making process from the beginning.
12. If the local council has formally resolved to make the proposed byelaw, they should make the byelaw under the common seal of the council, which should be placed after any schedule or plan included with the byelaw. The byelaw should also be signed and dated. Byelaws come into force a minimum of 30 days after the date they are made.

13. As byelaws are local enactments that may result in a fine in the form of a Fixed Penalty Notice (FPN), publicising the byelaw is an integral part of ensuring any new byelaw that will soon come into force is brought to the attention of the wider local community.
14. The council shall publicise the fact that a new byelaw has been made for 90 days (the minimum is 7 days) before the date on which the new local byelaw comes into force. This will enable the council sufficient time to provide information as far as possible to make the public aware that a new byelaw will be coming into force.
15. The local authority shall publicise the new byelaw on its website and make information available for the public.
16. If adopted the enforcement of the Local Byelaw for the Boroughwide Prohibition of the Burning of Outdoor Fires may require the recruitment of additional resources. There will a requirement for allocation of staff time from the Communications team, legal team and Regulatory Services towards enforcement. A small number of enforcement actions, which are actively publicised, could have a significant awareness raising impact, amplifying the policy's effectiveness.

ENDS