

LONDON BOROUGH OF HAMMERSMITH & FULHAM

Report to: Cabinet

Date: 12 May 2025

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

Report of: Cllr Max Schmid, Chief Whip

Report authors: Adam Webber, Air Quality Policy and Strategy Lead

Key Decision: Yes

SUMMARY

This report provides the context for the potential boroughwide prohibition of the burning of domestic and garden waste in Hammersmith & Fulham, as part of our work to reduce air pollution in the borough. This prohibition excludes barbeques and domestic fire-pits. It would also exclude any indoor wood burning.

Hammersmith & Fulham has committed to reducing Particulate Matter emissions (PM₁₀, PM_{2.5}) in the borough and to achieve compliance across the borough of the Annual Average World Health Organisation (WHO) Air Quality Guideline targets for Particulate PM₁₀ (20ug/m⁻³) and PM_{2.5} (10 ug/m⁻³) by 2030.

The latest data for Hammersmith & Fulham shows that in 2019, 14% of the borough's particulate emissions for PM_{2.5} can be attributed to domestic wood burning. In London this figure was 17%. Domestic wood burning includes emissions from both indoor and outdoor sources: this includes emissions from indoor wood burning stoves, as well as outdoor fires. It is not currently possible to ascertain the precise split within this figure between household wood burning (such as from stoves) and outdoor fires.

While the council has responsibilities to investigate complaints around smoke and fumes that could constitute a 'statutory nuisance' under the Environmental Protection Act 1990, these powers are reactive and do not prohibit burning. It is expected that a local byelaw will be required to enforce any prohibition. This paper outlines gaps where more data is required to move forward with a delivery programme for this policy.

A boroughwide prohibition on the burning of domestic and garden waste undertaken by means of adopting a new local Byelaw would be made under Section 235 of Local Government Act 1972. This report outlines the implementation plan of any potential new Local Byelaw for this purpose, subject to further baseline evidence gathering, and a finalised delivery programme for the formulation, consultation and eventual adoption.

RECOMMENDATIONS

1. To agree in principle with the approach of a boroughwide prohibition of the burning of domestic and garden waste within the London Borough of Hammersmith & Fulham.
2. To note the resource requirements of undertaking this work and make the recommendation above understanding that further baseline evidence gathering will be required to produce a full proposal. It is expected enforcement of any prohibition would be made through the means of provision and adoption of a new local byelaw under S.235 of the Local Government Act 1972.
3. To delegate responsibility to the Executive Director for Place for decision-making and defining the parameters of the boroughwide prohibition of the burning of domestic and garden waste in consultation with Cabinet Member for Climate Change and Ecology, including the delivery programme, consultation, and potential eventual adoption of the byelaw.

Wards Affected: (All)

Our Values	Summary of how this report aligns to the H&F Values
Building shared prosperity	All residents will benefit from this proposal, as it is intended to cover all wards and neighbourhoods, not just a select few.
Creating a compassionate council	All residents across the Borough deserve the same opportunities to live in healthy and happy neighbourhoods. Tackling air pollution is a key component of our wider environmental work that will support our ambitions of being a net carbon zero borough by 2030.
Doing things with local residents, not to them	Resident engagement will be a key feature of developing this programme,
Being ruthlessly financially efficient	Tackling air pollution is a key component of our wider environmental work that will support our ambitions of being a net carbon zero borough by 2030.
Taking pride in H&F	Tackling air pollution will result in a cleaner, greener, healthier borough.
Rising to the challenge of the climate and ecological emergency	Tackling air pollution is a key component of our wider environmental work that will support our ambitions of being a net carbon zero borough by 2030. Whilst the health of residents is the primary driver of this proposal, this programme supports the Council's climate and ecological emergency commitments and supports our work to make our communities and environments more resilient.

Financial Impact

It is proposed to agree in principle the borough-wide prohibition of domestic and garden waste in Hammersmith & Fulham. A robust evidence base is required to inform the introduction of any new policy to ensure both its successful implementation and value for money (i.e. that should this be enforced through a

byelaw, that this is worth pursuing in terms of its likely impact on pollution and subsequently on health outcomes). As such, there will be one off implementation costs relating to evidence gathering and communications (which could be significant), and ongoing costs relating to enforcement of the byelaw (which is expected to be undertaken by the Council's existing Environmental Public Protection service at no additional cost). Any investment required that cannot be accommodated within existing budgets will need to be considered separately as the project develops. Any resulting enforcement income (from non-compliance fixed penalty notices) will be reinvested in the cost of the enforcement activity.

Kellie Gooch, Head of Finance (Place), 20 March 2025

Verified by James Newman, AD Finance, 25 March 2025

Legal Implications

It is considered that a local byelaw may be the best approach to enforcing this policy.

Section 235 of the Local Government Act 1972 ("LGA" 1972") empowers local councils to make byelaws, stating as follows:

"...The council of a London Borough may make byelaws for the good rule and government of the whole or any part of the borough and for the prevention and suppression of nuisances therein."

The procedure for making byelaws is set out in section 236 of the LGA 1972. Section 236A provides for an alternative procedure. However, the alternative procedure in The Byelaws (Alternative Procedure) (England) Regulations 2016("2016 Regulations") does not apply in this instance as prohibition of the burning of outdoor fires is not one of the prescribed classes of byelaws listed in Schedule 1 of the 2016 Regulations or unless it applies just to open spaces.

It is imperative that the proposed byelaw is both necessary and proportionate. If the objective of the proposed byelaw can be achieved by way of alternative legislation, that alternative should be pursued.

Furthermore, the draft of the proposed byelaw submitted for the Secretary of States' consideration must be accurately and comprehensively drafted since only minor modifications can be made thereafter.

The creation of a byelaw is a non-executive function as it is listed in Schedule 1 Section F of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (SI 2000/2853) and therefore cannot, by virtue of Section 1 be the responsibility of the Cabinet.

The Local Authority constitution should set out whether the function of making a byelaw has been delegated to a committee or officer under LGA 1972, s 101. If it has not been delegated it remains a decision for full Council. As the Council's constitution does not delegate the power to any committee or officer the decision should be made by the full council.

The process is likely to require three decisions:

- to propose the byelaw;
- to seek Secretary of States approval; and

- the final stage confirming byelaw or not as the case may be.

The full council could delegate the subsequent decisions to a committee or officer.

Section 237 makes it an offence to contravene a byelaw that is in force. Section 237A provides for the Secretary of State to introduce fixed penalty notices for certain type of byelaws but no such regulation has been made to date.

Mrinalini Rajaratnam – Chief Solicitor Planning and Property – 21 March 2025

Background Papers Used in Preparing This Report

None

DETAILED ANALYSIS

Public Health

1. According to Public Health England (PHE), poor air quality is the largest environmental risk to public health in the UK. Long term exposure to man-made air pollution in the UK has an estimated annual effect equivalent to 28,000-36,000 deaths. Air pollution can lead to a variety of health problems including cardiovascular disease and lung cancer¹.
2. PHE says that people at higher risk of negative health impact due to air pollution include older people (65 years and older), children, people with cardiovascular (heart) disease and/ or respiratory (lung) disease, pregnant women, communities in areas of poor air quality, and poorer communities. PHE has also note that “In 2010, the Environment Audit Committee considered that the cost of health impacts of air pollution was likely to exceed estimates of £8 to 20 billion”².
3. The Committee on the Medical Effects of Air Pollutants (COMEAP) concluded in January 2022 that ‘The newer studies provide evidence of effects at low concentrations, and no evidence of a lower exposure threshold for the adverse health effects of PM_{2.5}. Due to the smaller size of the particle, PM_{2.5} is considered to have more adverse health impacts than PM₁₀ due to the ease with which it can travel deeper into the lungs and enter the bloodstream. Therefore, continuing efforts to reduce concentrations of PM_{2.5}, even where exposures are already low, would be expected to have a benefit to public health. This is a particularly important point for policy and decision making, as it suggests that reducing population exposure is an important public health goal, even when concentration-based air quality standards or targets are met’³.
4. The Committee on the Medical Effects of Air Pollutants (COMEAP) concluded in July 2022 that there is evidence to suggest an association between ambient air pollutants and an acceleration of the decline in cognitive function often associated

¹ [Health matters: air pollution, PHE](#)

² [Estimation of costs to the NHS and social care due to the health impacts of air pollution: summary report](#)

³ [Summary of COMEAP views on the studies in populations with low-level exposures: Appendix B](#)

with ageing, and with the risk of developing dementia⁴. This is in addition to the well-understand and researched impacts of pollutants and lung function, heart function, and various other health issues throughout life.

5. Air Pollution and Inequalities in London report published in 2023 provides analyses of the relationship between exposure to air pollution, deprivation and ethnicity in London. It shows communities which have higher levels of deprivation, and a higher proportion of people from ethnic minority groups of residents within these deprived communities, are still more likely to be exposed to higher levels of air pollution⁵.
6. Data is available to us on the health impacts of pollution as a whole. However, it is more difficult for us to drill down to the precise health impact of specific sources of pollution, such as Particulate emissions from outdoor fires. In Hammersmith and Fulham, Public Health England data suggests that the fraction of mortality attributable to particulate air pollution was 6.3% in 2023⁶, compared to an England average of 5.3%. This places the borough as the 11th worst local authority in England for the health impacts of particulate pollution. An attributable fraction indicates the contribution of a risk factor (here, ambient air pollution) to mortality from a disease, and is estimated from the relative risk corresponding to the exposure. However, it is important to note that this is from all sources of particulate matter; emissions from outdoor fires are calculated as part of emissions from wood burning, which are in turn only part of the story of particulate emissions.

The health impact of outdoor fires / wood burning

7. The latest data for Hammersmith & Fulham shows that in 2019, 14.3% of the borough's particulate emissions for PM_{2.5} can be attributed to domestic wood burning⁷. In London this figure was 17%. Domestic wood burning includes emissions from both indoor and outdoor sources: this includes emissions from indoor wood burning stoves, as well as outdoor fires. It is not currently possible to ascertain the precise split within this figure between household wood burning (such as from stoves) and outdoor fires.
8. While there is well established data on the impact of the air pollution produced by the burning of solid fuel on health, there has been less research on outdoor fires specifically. Work has tended to focus on wood burning as a wider source of emissions, particularly from indoor wood burning stoves in homes. However, some of this research is salient to this paper's proposals:
 - A study published in 2022 of particulate matter data from wood burning emissions (from indoor wood burning stoves and outdoor fire emissions) was quantified at five air quality monitoring locations in the UK, comprising three rural and two urban sites (London, Glasgow) between 2009 and 2021. As expected, air pollution from wood burning was greatest in winter and almost absent in summer when residential heating is minimum and atmospheric dispersion is enhanced.

⁴ [Cognitive decline, dementia and air pollution: A report by the Committee on the Medical Effects of Air Pollutants](#)

⁵ [Air Pollution and Inequalities in London - update 2023 | London City Hall](#)

⁶ [Public Health Outcomes Framework - Data | Fingertips | Department of Health and Social Care](#)

⁷ [London Atmospheric Emissions Inventory \(LAEI\) 2019 - London Datastore](#)

Average Particulate Matter (PM) emissions from wood burning during the heating season (November to March) were greatest in South-East England and London⁸.

- Outdoor fires also cause episodes of elevated PM_{2.5} concentrations, as is evident in the peaks lasting for several hours that frequently occur around annual Bonfire night, which vary in magnitude due to meteorological conditions. Analysis has revealed that peaks around 5 November (Bonfire Night) are predominantly associated with PM_{2.5}, and PM₁₀. However, the impacts of bonfires are difficult to quantify, with figures in the LAEI acknowledged to be highly uncertain. Bonfires represent increased concentrations for a short duration⁹.
9. As such, we currently do not have data (monitored or modelled) that shows the precise proportion of the borough's particulate matter emissions that come from outdoor fires. As a result, we also do not have data that shows the precise health impact of outdoor fires. It would be anticipated that the health impacts of burning waste outdoors, which would be covered by any prohibition, would likely be worse than woodburning bonfires due to the materials being burned.

Other impacts of burning domestic and garden waste

10. As part of the Council's commitments on the climate and ecological emergency, we are working to meet the challenges of climate adaptation, and to make our communities more resilient to a changing climate. The risk of outdoor fires spreading and becoming out of control will likely increase in future due to a warmer and drier climate. Prohibiting the burning of garden waste and other waste will reduce the potential for this.
11. Smoke, odours and antisocial behaviour are also associated with the burning of waste materials outdoors, which this policy would help to address. The section below outlines the Council's current powers to investigate nuisance caused by smoke.

Existing powers

12. The Council, through the Environmental Protection Act 1990, has a responsibility to investigate complaints about smoke from premises that could be a 'statutory nuisance'. For the smoke to count as a statutory nuisance it must do one of the following:
- unreasonably and substantially interfere with the use or enjoyment of a home or other premises
 - injure health or be likely to injure health
13. If we agree that a statutory nuisance is happening, has happened or will happen in the future, we can serve an abatement notice. This requires whoever is responsible to stop or restrict the smoke. These powers are reactive and require us to respond to complaints. It is also considered that a fire could release harmful air pollutants, while also not being considered a 'statutory nuisance'. There is also a general requirement within the Environmental Protection Act 1990 that waste

⁸ [Long-term trends in particulate matter from wood burning in the United Kingdom: Dependence on weather and social factors, ScienceDirect, 2022](#)

⁹ [Air Quality England Report: Bonfire Night 2022](#)

should not be kept, treated or disposed of in a manner likely to cause pollution to the environment or harm to human health.

14. There are also existing powers within the 1990 Act covering commercial waste. Businesses have a duty of care under the Environmental Protection Act 1990 to ensure that their waste is stored, collected, transported and disposed or recycled properly so that it does not cause pollution to the environment or harm human health.
15. The whole of Hammersmith & Fulham is a designated Smoke Control Area, which restricts the types of fuels that can be burned. However, these powers do not extend to outdoor fires.

Further research required

16. The powers outlined above do not extend to fully minimising the impacts of outdoor fires, particularly from waste burning. If a local byelaw is considered, a robust evidence base is required. This is to both ensure the successful implementation of a new byelaw, and to ensure that the council resources required for implementation represent value for money, i.e. that the byelaw is worth pursuing in terms of its likely impact on pollution (and subsequently on health outcomes).
17. From the section above, there are two enabling pieces of work required to build the case for prohibiting domestic and garden waste through a byelaw in the borough:
 - Source apportionment: data is required to understand the breakdown of H&F's domestic wood burning emissions (6.1% of total particulate emissions) to isolate the true level of emissions in the borough from the burning of domestic and garden waste.
 - Health impacts: data is required to understand the short- and long-term health impacts of outdoor fires on public health. Short-term impacts could be quantified through ascertaining health data related to times of year where such activity is highest. Long-term impacts would need to be extrapolated from the source apportionment analysis outlined above, i.e. if we know the % of particulate emissions from the relevant outdoor fires, we could calculate the % of the overall health impact of particulates from them.

Required approach to the adoption and enforcement of new byelaws

18. It is considered that a local byelaw may be the best approach to enforcing this policy. A summary of the required approach to adopting any new byelaws in the borough can be found in Appendix 1. This sets out the formal requirements for consultation, the role of the relevant Secretary of State, advertisement, amendment and adoption of the proposed byelaw.
19. A summary of the timeframes for the introduction of a new byelaw are set out below:

Element	Time required
Regulatory assessment of proposed	Not defined, but would need to be

byelaw	completed before public consultation
Public consultation	Minimum 12 weeks
Submission of byelaw 'scheme', including consultation response document and regulatory assessment, to Secretary of State	Within 12 weeks
Secretary of State response	Maximum 30 days
Formal consultation following public notice to make the byelaw	Minimum 28 days
Make the byelaw	After 28 days but before 6 months of formal public notice

20. Byelaws are enforced by the local authority through the magistrates' court and contravening a byelaw can result in a fine upon successful conviction. It is proposed that the Environmental Public Protection (Noise & Nuisance) team, which currently covers statutory nuisance complaints related to outdoor fires using powers under the Environmental Protection Act 1990 s79/80, would be responsible for investigating any complaints and enforcing the byelaw.
21. An English Devolution White Paper was published by the Secretary of State for Housing, Communities and Local Government in December 2024¹⁰. This Paper outlined potential changes to rules surrounding the implementation of byelaws by local authorities¹¹. Officers will monitor any potential new legislation which would impact on the process for byelaws.

Reasons for Decision

22. The aim of any restrictions of the burning of domestic and garden waste is to improve local air quality across the borough, and help our environments and communities adapt to a changing climate. It is considered this will not include barbeques or outdoor burners/heaters used by licensed properties such as pubs and restaurants, or domestic fire pits. It would also exclude any indoor wood burning.
23. This policy will support our work towards achieving the Council's policy agenda for Public Health and the Climate Emergency. However, further work is required to understand the impact of this work and whether the resources required to implement the policy will provide value for money.
24. Working with resident groups and engaging the wider community on project development proposals helps the Council to build a better understanding of local issues and proposals and design tailored and specific projects to best address the concerns of local communities.
25. The project can be amended, altered or abandoned without significant capital investment on legal enforcement of the proposals.

¹⁰ [English Devolution White Paper - GOV.UK](#)

¹¹ [Devolution White Paper: On-the-day factual briefing | Local Government Association](#)

26. The collection of baseline data in generating a full project plan and proposals will inform decision making. This will include work to define 'domestic and garden waste' to keep any restrictions in line with existing powers related to commercial waste. Any future recommendation to make a project permanent or to abandon a project will need to be based on data and feedback collected during the project.
27. It is considered that a local byelaw may be the best approach to enforcing this policy. 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.

Equality Implications

28. At this stage, the Council is considering solely whether to approve the outline programme. As the specific scheme is developed in greater detail, further consideration will be given to the potential equalities impacts and a specific EQIA will be carried out. The equalities impact of the scheme will be further monitored and assessed following the implementation of any byelaw and considering the consultation that will take place at that stage before any decision as to whether any of the scheme should be made permanent is taken.

Risk Management Implications

29. There is a significant reputational risk that the implementation of a ban without adequate communication about what is and what isn't being prohibited will lead to negative resident reaction and press coverage especially at Bonfire Night (Fireworks Night). This risk should be reduced by consideration of exclusions to the proposal including the burning of dry waste (as is practised in almost all other local authorities in the country) or for specific traditional events (including Bonfire Night, Holi and Diwali).

Jules Binney. Risk and Assurance Manager, 10th March 2025

Climate and Ecological Emergency Implications

30. This policy will support our work towards achieving the Council's policy agenda for Public Health and the Climate Emergency. It will also support our commitment to meeting the World Health Organisation guideline levels for air pollution. Outdoor

fires and wood burning create harmful particulate matter emissions, for which it is considered there is no safe level. Short term exposure to high particulate matter emissions can cause asthma episodes and play a part in a multitude of other longer-term effects. Restricting outdoor fires in this way will also have climate adaptation and resilience benefits, through reducing the risk of fires becoming out of control in warmer and drier weather.

Hinesh Mehta, Assistant Director of Climate Change, 24th March 2025

Coproduction, Engagement and Monitoring

31. The Council will follow all statutory requirements and guidance required for the making, implementation, consultation and monitoring of any new byelaw.

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LIST OF APPENDICES

Appendix 1 – Required approach to the adoption of new byelaws