

Report to: Cabinet

Date: 11 February 2019

Title: Consideration of options to ban the release of sky lanterns and helium balloons

Report of: Catherine Knight, Assistant Director Legal and Democratic Services

Cabinet member: Councillor Isabelle Linington, Cabinet Member for Environmental Impact

Ward(s): All

Purpose of report: To consider banning the release of sky lanterns and helium balloons from public land in the Lewes district

Decision type: Non-Key

Officer recommendation(s): (1) That Cabinet grants the Director of Service Delivery delegated power to introduce a new condition into the Council’s event hire licences, banning the release of lighted sky lanterns and the release of helium filled balloons.

(2) That the Director of Service Delivery monitors the level of complaints relating to the use of sky lanterns and helium balloons in the Lewes district and, if necessary, reports back to Cabinet in six months’ time with a recommendation for any further or alternative regulatory measures that may be required.

Reason for recommendations: To introduce a reasonable and proportionate measure to prevent the nuisance associated with the release of sky lanterns and/or helium balloons from public land in the Council’s area.

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1 Introduction

1.1 At the Cabinet meeting on 5 December 2018 an urgent item was raised by the Leader of the Liberal Democrat Group, Councillor Osborne, concerning issues arising from the release of “Chinese” lanterns and balloons, which were a

particular concern around Christmas and New Year celebrations. Cabinet agreed to look into this urgently, with input from Officers on the options for enforcing a ban on the release of such lanterns and balloons from Council owned land and further.

- 1.2 “Chinese” lanterns are referred to in this report as ‘sky lanterns’, being small hot air balloons typically around 100 cm high and with a diameter of approximately 60 cm, and made of paper with an opening at the bottom where a small fire is suspended.
- 1.3 In most areas of the country the issue with balloons has concerned helium balloons which are balloons made of latex or foil, inflated with helium gas and typically 25-30 cm in height. This report deals with sky lanterns and this particular type of balloon.
- 1.4 Many local authorities have looked at ways of regulating the use of sky lanterns, as there have been several significant fires nationally which have been attributed to their use. Further, the sky lanterns can be a risk to coastal rescue services as they may be mistaken for a flare. In addition it is widely reported that sky lanterns and helium balloons create a risk to livestock and animal health, cause littering, and can be a risk to aviation. This view has been supported by, amongst others, the RSPCA, the National Farmers Union, the Civil Aviation Authority, the Marine Conservation Society and some Fire Services. That said, the Government does not advocate a complete ban on the release of sky lanterns and/or helium balloons.
- 1.5 Other local authorities have taken a range of responses to this issue dependent upon how significant a problem it is in their area. Whilst there have been no recorded formal complaints to this Council about any harmful effects of the release of sky lanterns and/or helium balloons, a small number of representations have been made by members of the public, urging the Council to implement a ban on the release of sky lanterns.

2 Steps taken to date

- 2.1 On 23 December 2018 the Council issued a press release (see Appendix 1) and posted the same information on its website on 7 January 2019, warning of the problems that can arise from releasing sky lanterns. This was intended to discourage their use and is an approach used by many local authorities including Suffolk County Council (December 2014) and Northamptonshire County Council (July 2013).

3 Options for dealing with this issue

- 3.1 Cabinet is invited to consider the following three options.

Option One: Insert a new condition into event hire licences

- 3.2 In conjunction with the publicity to discourage use, as outlined above, add a condition to the Council’s event hire licences, making it a breach of contract for those hiring the Council land to release any lighted sky lantern or helium balloon.

Breaching this condition may result in any deposit being retained and the licence holder being refused an event licence in the future.

Option Two: Introduce a Public Spaces Protection Order ('PSPO')

3.3 Make a PSPO, prohibiting the release of lighted lanterns and/or balloons in specified public locations, including Council-owned land.

3.4 This option could be pursued **only** if the statutory criteria for making a PSPO are met. These are, in brief, that the behaviour or activity to be restricted is:

- having, or are likely to have, a detrimental effect on the quality of life of those in the locality
- persistent or continuing in nature; and
- is unreasonable

3.5 Breaching a PSPO without reasonable excuse is a criminal offence punishable by a fixed penalty notice or prosecution. A PSPO can last for a maximum of three years but may be renewed if justified.

3.6 However, it is doubtful that the first (and most important) of the statutory criteria above would be met, since the Council has received no complaints about sky lanterns or helium balloons actually causing any damage or annoyance.

3.7 In any case, before a PSPO is considered the Council should always look into less restrictive ways of addressing the activity in question.

3.8 Lastly, it should be noted that any action which potentially makes the release of lanterns and balloons a criminal offence would be controversial as some individuals release lanterns and balloons on the death of a loved one.

Option Three: Variation of existing byelaws

3.9 Vary the existing byelaws for pleasure grounds, public walks and open spaces by adding a prohibition against the release of lanterns and balloons.

3.10 The advantage of this option is that byelaws can be enforced immediately, whereas other interventions may require evidence of a persistent nuisance.

3.11 However, Government guidance is clear that byelaws should be only considered when there is an existing problem and not in those cases when behaviour is just likely to be a problem as seems to be the case in relation to lanterns and balloons. Research suggests that no other local authority has introduced such a byelaw.

3.12 Further, byelaws should always be proportionate, reasonable and adopted only if the Council is satisfied that no other reasonable measure would have the desired effect. As the Council has not yet piloted the event hire condition set out above, it would not be appropriate to pursue a byelaw at this stage.

4 Proposal

4.1 For the reasons given above, option one is preferred. Accordingly, it is recommended that–

(1) Cabinet grants the Director of Service Delivery delegated power to introduce a new condition into the Council’s event hire licences, banning the release of lighted sky lanterns and the release of helium filled balloons.

(2) The Director of Service Delivery monitor the level of complaints relating to the use of sky lanterns and helium balloons in the Lewes district and, if necessary, reports back to Cabinet in six months’ time with a recommendation for any further or alternative regulatory measures that may be required.

5 Outcome expected and performance management

5.1 Inclusion of the new condition in event hire licences should prevent the release of lanterns and balloons from those events on Council land.

5.2 Recommendation (2) would, if approved, involve the Director of Service Delivery monitoring complaints of any ongoing nuisance and bringing back further proposals to Cabinet if warranted.

6 Consultation

6.1 As this Report involves the consideration of options to progress, no external consultation has yet taken place, although relevant Officers have been canvassed for their views.

7 Corporate plan and council policies

7.1 Any of the options would be in line with the Council’s aim of maintaining the quality of public parks and community spaces.

8 Business case and alternative option(s) considered

8.1 The three options for addressing the potential issues associated with the release of lanterns and/or balloon are evaluated in paragraph 3 above.

9 Financial appraisal

9.1 Option one would involve the inclusion of a new condition in council event hire licences, the drafting of which would require input from the Council’s lawyers which will be absorbed within current resources.

9.2 Options two and three would be significantly more resource-intensive in terms of the making of the PSPO or revision of the byelaw. In addition, there would be significant cost implications, in terms of Officer resources, to monitor any breaches of a PSPO or revised byelaw and to take enforcement action for non-

compliance including prosecution.

10 Legal implications

- 10.1 It is within the Council's powers to make any of the three options detailed in paragraph 3 above.
- 10.2 As regards option 1, the Council would need to draw the attention of the hirer to the new condition of contract. This is particularly important in respect of persons who frequently hire Council land for external events, as the condition concerning sky lanterns and balloons will be a departure from the standard wording.
- 10.3 For option 2, the Council would take its powers from section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014, but could lawfully proceed to make a PSPO only if the criteria mentioned in paragraph 3.2 were met.
- 10.4 As regards option 3, the Public Health Act 1875 and the Open Spaces Act 1906 permit the Council to make and amend byelaws relating to pleasure grounds and open spaces. Common law rules on reasonableness and proportionality may restrict what can be included within a byelaw, or preclude such a measure at all.

Lawyer consulted 21.01.19

Legal ref: 007899-LDC-MW

11 Risk management implications

- 11.1 Measures to address any problems arising from the release of sky lanterns or helium balloons should be proportionate to the likelihood of these problems occurring and the impact they might have. There is a known risk associated with the release of these objects generally (see paragraph 1.4 above) but until the risk specific to the Lewes district can be quantified, only option one would be considered a proportionate response for this Council.

12 Equality analysis

- 12.1 There is no evidence that the release of sky lanterns or helium balloons is especially associated with one or more groups of persons with a characteristic that is protected under the Equality Act 2010. Nor are such groups any more likely than persons without a protected characteristic to hire land from the council for outdoor events.
- 12.2 Accordingly, implementing option one is not considered to have any significant equality implications.

13 Appendices

- Appendix 1 - Council press release of 23 December 2018

14 Background papers

The background papers used in compiling this report were as follows:

- Sky lanterns and helium balloons: An assessment of impacts on livestock and the environment (Defra, May 2013)
- Local Government Legislation: Byelaws - <https://www.gov.uk/guidance/local-government-legislation-byelaws>
- Briefing Paper (December 2015) - House of Commons Library - Local Authority Byelaws
<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01817#fullreport>
- Anti-social Behaviour, Crime and Policing Act 2014. Statutory Guidance for Frontline Professionals. December 2017: Home Office.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679712/2017-12-13_ASB_Revised_Statutory_Guidance_V2.1_Final.pdf