

<b>Decision maker:</b>	<b>Cabinet member contracts and assets</b>
<b>Decision date:</b>	<b>17 November 2017</b>
<b>Title:</b>	<b>Introduction of local controls regarding the release of sky lanterns and helium balloons</b>
<b>Report by:</b>	<b>Property services manager</b>

## **Classification**

Open

## **Decision type**

Non-key

## **Wards affected**

All wards

## **Purpose and summary**

To introduce local controls regarding the use of sky lanterns at council run events and private events that are held on council owned or leased land.

To seek to use a model licensing condition for applicants to offer on their application, or members to apply when applications come before them, as a way to curtail the use of sky lanterns on private sites i.e. licensed wedding venues and licensed premises.

To respond to the motion passed by Full Council, improve public safety, take steps to protect livestock and minimise damage to the environment by littering.

## **Recommendation(s)**

**That:**

- (a) a standard licence condition to allow the council, as the licensing authority, to encourage restricting the use of sky lanterns at licensed premises under the public safety licensing objective, be implemented with immediate effect which applicants may choose to offer within their application or which may be imposed, as appropriate, by the council when considering applications which come before it;**

- (b) a condition be included in the terms of use for council owned land (highways, parks, new lease or license agreements) to restrict the release of sky lanterns and helium balloons when land is hired or used for events;**
- (c) a local policy be implemented with immediate effect prohibiting the use of sky lanterns and helium balloons at all council organised events and premises; and**
- (d) the assistant director of environment and place be authorised to take all operational decisions necessary to implement the above recommendations including undertaking a publicity campaign to raise awareness of the environmental consequences of balloon and Chinese/sky lantern releases.**

## **Alternative options**

- 1 To not take the proposals forward and instead review any new proposal should DEFRA or any other government department offer further guidance or restrictions on the use of sky lanterns or helium balloons. This is not recommended because it would not address the concerns raised during debate of the motion at full Council in September 2015.
- 2 To consider an alternative policy or control measure, although this would have to comply with the council's obligations and legal powers, as required by the current licensing regime.

## **Key considerations**

- 3 In September 2015, Full Council passed a motion requesting that the executive consider imposing restrictions on the use of sky lanterns on council owned land or at events licensed by the council. In addition it is proposed to implement a publicity campaign to inform residents of the risks associated with use of such lanterns and balloons. Sky lanterns (known by a variety of names including Chinese lanterns) are small hot air balloons made of paper often over a wire or bamboo framework with an opening at the bottom where a small flame is maintained on a suspended base framework containing a fuel source.
- 4 They are intended to be launched into free flight, rising due to the enclosed hot air. Sky lanterns are intended to ascend and remain airborne for as long as they are filled with hot air. However evidence shows that lanterns often drift back to land, become entangled in cables or hit building structures whilst still alight.
- 5 The use of sky lanterns has increased dramatically over the last decade and the devices are now common at weddings, New Year's Eve celebrations and other public and private events.
- 6 Although there is little evidence to suggest that sky lanterns have caused problems within Herefordshire, this is not the case across the region or nationally. The most notable being the recycling plant fire at Smethwick in the West Midlands involving 100,000 tons of recycled plastic with an estimated cost of £6m.
- 7 The Chief Fire Officers Association, National Farmers Union, Women's Farmers Union, Marine Conservation Society, Country Land Owners Association, RSPCA and RSPB are amongst those urging individuals to use alternatives to sky lanterns and to ask event planners and retailers to stop using these devices. A plea for councils to use alternatives at their events and to ban releases of sky lanterns on their own land has also been issued by many of these organisations. Two professional bodies for events professionals (the Local Authority Events Organisers Group and the National Outdoor Events Association)

also support the introduction of a national ban on lanterns.

- 8 Internationally many countries have already taken steps to ban the use of sky lanterns due to concerns regarding their potentially hazardous nature. The UK government has not, to date, banned sky lanterns. However, over 45 councils so far have taken the decision to apply local controls to restrict their use.
- 9 In a nationwide survey in 2011, a third of Britain's chief fire officers confirmed their services had received emergency callouts to extinguish fires caused by sky lanterns.
- 10 West Midlands Fire Service (WMFS) is calling for a review of legislation regarding the use of sky lanterns. This request comes as the service tackled one of the largest fires in the West Midlands, involving 100,000 tonnes of recycling material and causing an estimated £6 million worth of damage. The fire was started by a sky lantern which landed at a plastics recycling plant in West Bromwich in 2013.
- 11 Sky lanterns may land when the flame is still alight, presenting a fire hazard. In typical designs the lantern stays upright and the paper should not get hot enough to ignite unless the balloon is tilted (say, by the wind or by hitting an object, or becoming entwined); in which case it may catch fire while still in the air. The paper structure of the lantern will usually burn in a few seconds, but the flame source may remain lit until the fuel is exhausted.
- 12 In addition to fire safety concerns, the government have previously warned people not to use sky lanterns due to their effects on livestock and the countryside. The warning issued by the Department for Communities and Local Government stated "We recommend you do not use sky lanterns as you have no control over them once they have been set off. They can kill animals, litter the countryside and start fires."
- 13 Campaigners including the Country, Land and Business Association have welcomed this guidance as a step forward, but have urged the government to press ahead with a full national ban.

## **Community impact**

- 14 This decision promotes the safety of residents in accordance with the Licensing Act's public safety objective and supports businesses who could suffer loss of livestock or property, in keeping with Herefordshire Council's corporate objectives.

## **Equality duty**

- 15 Section 149 of the Equality Act imposes a duty on 'public authorities' and other bodies when exercising public functions to have due regard to the need to:
  - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This decision will not impact on the council's ability to discharge its 'equality duty' as there are no equality implications arising from this report.

## Resource implications

- 16 There are limited staffing and no financial implications for the council. The controls detailed above will be integrated into existing compliance processes rather than enforced proactively. Costs of information awareness raising and publicity are considered minimal.

## Legal implications

- 17 Under section 87 of the Environmental Protection Act 1990 it is an offence to throw down, drop or otherwise deposit, and then leave, litter in a public open place. Councils have the ability to enforce this Act with fixed penalty notices. However, the release of balloons and sky lanterns is not deemed "littering" under the legislation and therefore it is unlikely that any legal action could be taken under the 1990 Act.
- 18 In respect of the Licensing Act 2003 the use or release of sky lanterns is not a licensable entertainment or activity that falls within the direct control and jurisdiction of the Act in the way that the sale of alcohol or the performance of live music would.
- 19 It is very unlikely that applicants for a premises licence, club premises certificate or Temporary Event Notice would ever inform the Licensing Authority of any planned use of sky lanterns as part of any other licensable activity or entertainment taking place because they are not specifically required to under the Act.
20. If an applicant did include details of the use or release of these lanterns within their operating schedule, for example as part of an application for a new premises licence or a variation of licence, or there is knowledge that this is likely to take place, then it would be open to 'Responsible Authorities' to comment on this use. However such scrutiny is more likely to fall within the remit of the 'Public Safety' licensing objective than it is to come under the 'Public Nuisance' objective, which mainly concerns noise nuisance, light pollution, noxious smells and litter emanating from, or sourced from, licensed premises.
21. An application will only be heard and determined by a Licensing Sub Committee, however, if representations in the form of objections are submitted against it that are relevant representations under the Licensing Act 2003. It is not open to a Licensing Authority to attach conditions to an application to control, restrict, or curtail times or activities if no relevant representation has been submitted to justify the attachment of such conditions. If no representations are made then an application must be granted as applied for, unless it is clear to the Licensing Authority that by granting the application it would undermine the licensing objectives. In respect to Temporary Event Notices it is only the police and the environmental health service that can submit a representation against the notice.
22. Whilst it is ultra vires under the Licensing Act 2003 to impose standard conditions on licences, it is possible for the council to use its role as 'Responsible Authority' to directly influence licencing controls and formal conditions.
23. Event organisers can voluntarily update the hiring agreements to incorporate an explicit prohibition or restriction on the use of sky lanterns. For events held on council land similarly relevant licences and hiring agreements can be updated.

## **Risk management**

24. If the proposals are agreed, the measures will help to improve public safety as well as support the emergency services in reducing potential incidents. Raising public awareness about the problems associated with these devices would also be a benefit.
25. If the proposals are not agreed, and the popularity of such devices continues to increase, there may be an increase in damage caused by their use.

## **Consultees**

26. The Hereford and Worcester Fire & Rescue Service have been consulted and support the controls proposed.

## **Appendices**

- None

## **Background papers**

None identified