



29 June 2023

Title	Borough Wide Smoke Control Area Declaration
Purpose of the report	To make a decision
Report status	Public report
Report author	Ross Jarvis
Lead councillor	Councillor Ennis
Corporate priority	Healthy Environment
Recommendations	<p>The Committee is asked to:</p> <ol style="list-style-type: none"> 1. Revoke the existing Smoke Control Orders and that they be replaced with a single Smoke Control Order across the whole Borough, subject to the outcome of consultations and confirmation by the Secretary of State. 2. Subject to the outcome of the public consultation, authorise the Assistant Director, Planning, Transport & Public Protection, in consultation with the Lead Councillor and the Assistant Director for Legal and Democratic Services to exercise the delegation confirming the order.

1. Executive summary

- 1.1 The purpose of this report is to bring forward a proposal to revoke all the existing Smoke Control Areas (SCA) currently covering a large part of the Borough, and to replace them with a new single Order declaring the whole of the Borough a smoke control area.
- 1.2 SCA's were first introduced under the Clean Air Act 1956 to restrict coal burning following bad smog events. SCA's are still relevant today due to the rise in popularity of wood burning stoves.
- 1.3 The current Clean Air Act 1993 was recently updated by the Environment Act 2021 to provide a simpler regime for smoke control enforcement, allowing a possible decriminalised regime with a simplified structure for issuing penalty notices.
- 1.4 There are currently 21 SCAs within the Borough that have been declared since 1959. However, these only cover around 62% of the borough. See Appendix 1 for map of existing areas.
- 1.5 The benefit of this proposal is to reduce the risk of harmful emissions of uncontrolled burning of solid fuels in open fireplaces in the 38% of Reading currently not covered by SCAs.
- 1.7 The proposal will also ensure consistency and minimise confusion in relation to the controls in place for the burning of solid fuels across the Borough and to raise awareness of the health impacts of burning solid fuel on air pollution.
- 1.8 Before the new SCA can be declared a statutory consultation process would be completed (see section 6 below). A public awareness campaign would also be carried

out alongside this process to ensure that residents are aware of any implications there might be on them.

2. Policy context

2.1. The Council's new Corporate Plan has established three themes for the years 2022/25. These themes are:

- Healthy Environment
- Thriving Communities
- Inclusive Economy

2.2. These themes are underpinned by "Our Foundations" explaining the ways we work at the Council:

- People first
- Digital transformation
- Building self-reliance
- Getting the best value
- Collaborating with others

2.3. Full details of the Council's Corporate Plan and the projects which will deliver these priorities are published on the [Council's website](#). These priorities and the Corporate Plan demonstrate how the Council meets its legal obligation to be efficient, effective and economical.

2.4. The Environment Act 2021 established a legally binding duty on government to bring forward at least two new air quality targets in secondary legislation. The air quality targets set under the Act are:

- Annual Mean Concentration Target ('concentration target') - a maximum concentration of 10µg/m³ to be met across England by 2040
- Population Exposure Reduction Target ('exposure target') - a 35% reduction in population exposure by 2040 (compared to a base year of 2018).

2.5. Although the above targets are not currently the direct responsibility of local authorities, the decision is being driven by the Council's commitment to improve local air quality.

2.6. PM2.5 is considered a particularly harmful pollutant with regard to human health. These tiny particles are able to travel deep into the respiratory tract leading to numerous health conditions including asthma, lung cancer, cardiovascular disease, dementia and pregnancy loss.

2.7. The 2016 Air Quality Action Plan contains an action to raise awareness of the existence of smoke control areas to reduce the emission of pollutants from open fires and wood burners.

3. The proposal

3.1. Current position:

3.2. There are currently 21 SCA in Reading that have been declared since 1959, but these only cover around 62% of the borough.

3.3. Smoke Control Areas (SCAs) make it an offence to emit smoke from a chimney within the area unless using an appliance on the Department Environment Food and Rural Affairs (DEFRA) exempt list or using an authorised fuel.

3.4. Households using an exempt appliance or authorised 'smokeless' fuel should not produce a 'substantial' amount of smoke, so would not be subject to enforcement action.

- 3.5. Until recently unauthorised fuels could be bought and sold within a smoke control area because the seller or buyer could reason that it would be used outside the smoke control area or will be burnt in an exempt appliance.
- 3.6. From 1 May 2021 it became an offence to sell an unauthorised fuel for domestic use under the Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020 (2020/1095)). For example, it is now an offence for any person to supply a solid fuel including wood (unless it has a moisture content of less than 20%). It is also now an offence for any person to supply any manufactured solid fuel (MSF) that has not been authorised and classified as an exempt fuel.
- 3.7. MSF for use in SCAs is available at any reputable supplier and easy to identify via the 'Ready to Burn' logo.
- 3.8. Wood must also be certified under the 'Ready to Burn' scheme (as having under 20% moisture content), although there is an exemption for quantities in excess of 2m³ sold outside SCAs. Quantities sold over this amount must be sold accompanied by guidance on how to store to ensure proper seasoning of the wood. The sale of traditional house coal was made illegal on 1st May 2023.
- 3.9. The enforcement of SCAs is currently carried out by officers on an intelligence led basis in accordance with guidance and it is not proposed to change this.
- 3.10. Records show we have only received an average of 4 complaints per year about smoke from chimneys over the past 10 years. None of these complaints has led to formal enforcement action being taken (prosecutions or fixed penalty fines). Although the legislation was only changed in 2021 to allow fixed penalty fines to be issued, which may make formal action easier, and therefore more likely in the future.
- 3.11. When a substantial amount of smoke is detected from a chimney the guidance recommends a written warning (also known as an 'improvement notice') is sent to the person responsible, although this is not a legal requirement.
- 3.12. If they continue to emit a substantial amount of smoke from their chimney, the Council must then:
 - Issue a notice of intent.
 - If no valid objection received within 28 days - issue a final notice with a financial penalty.
- 3.13. Households using an exempt appliance or authorised 'smokeless' fuel should not produce a 'substantial' amount of smoke, so would not be subject to enforcement action.
- 3.14. There is a right to appeal the final notice within the 28-day period to the first-tier tribunal.
- 3.15. The financial penalty can be appealed on the following grounds:
 - Based on a factual error
 - Based on a legal error
 - Unreasonable
- 3.16. The final notice is suspended until the result of the appeal or the appeal is withdrawn.
- 3.17. The first-tier tribunal may:
 - Cancel the final notice
 - Confirm the final notice
 - Change the final notice by reducing the amount of the financial penalty
 - Ask the local authority to decide whether to withdraw or confirm the final notice or reduce the amount of the financial penalty
- 3.18. Options proposed**

- 3.19. It is proposed to declare the whole Borough a Smoke Control Area by issuing a single Smoke Control Order using the process contained in Clean Air Act 1993 Schedule 1. This Order will revoke and replace the original 21 Orders issued previously.
- 3.20. This will ensure consistency in relation to the legal restrictions of burning solid fuel and the type of equipment that can be used.
- 3.21. The proposed revocation of the existing orders and the making of a borough-wide smoke control order will help support the enforcement of the new domestic fuel regulations providing an effective and holistic approach to tackling smoke pollution.
- 3.22. To coincide with the declaration of the new SCA officers will work to ensure residents are informed of the changes and what this means for them. This will be done through the formal consultation process (see section 6) with additional publicity through the Council's communications channels to ensure that people are aware of the changes and the implications of this.
- 3.23. Long term benefits from agreeing to the recommendations will be a reduction in the quantity of PM2.5 produced in the Borough, resulting in cleaner air and health benefits for those who live and work in the Borough.

3.24. Other options considered

- 3.25. To revoke all Smoke Control Orders and not replace and therefore have no restrictions. This option would go against the Council's objectives in relation to climate change and air quality.
- 3.26. To leave the 21 Smoke Control Areas in place covering 62% of the borough. However, this creates inconsistencies across the borough and can be confusing for residents. This approach would also not be progressive in improving Air Quality within the borough.
- 3.27. It is recommended that the best course of action to enable the health benefits from cleaner air to be realised is to declare a borough wide Smoke Control Area.

4. Contribution to strategic aims

- 4.1. The actions contained in this report contribute to:

Healthy Environment - The proposal would help to improve air quality which would directly contributing to the service priority from the Council's Corporate Plan. Reference

Inclusive Economy – UK wood suppliers (New Scientist 2 September 2022) have reported an unprecedented surge in demand for logs, briquettes and other biomass products as households try to minimise the impact of rising energy bills. This resurgence in burning wood can exacerbate air pollution and damage people's health. It is therefore important that we have better control of our area by having a single Smoke Control Area and inform residents of the correct appliances and fuels to be used.

5. Environmental and climate implications

- 5.1. The proposal aims to improve local air quality by introducing better control of solid fuel burning that contributes to 22-38% of local particulate pollution.
- 5.2. Solid fuel can be burned sustainably if it is replaced like for like, although there are greener forms of heating with should be encouraged over solid fuel. The proposal will encourage people not to burn solid fuel from unsustainable sources, helping to contribute to a net zero carbon Reading by 2030.
- 5.3. The Climate Impact Assessment toll shows an overall rating of low positive due to the reduction of burning of unsustainable sources of solid fuel that this policy is expected to have. Any other climate related impacts are considered negligible.
- 5.4. With a revival in the popularity of 'real fires' there are a number of solid fuel burning stoves in the market that comply with the legislation, and many already in use across

Reading are likely to be compliant. There is a growing public awareness surrounding the impact and harm caused by burning solid fuels and a desire to improve local air quality. This report, and the need to modernise the smoke control orders, reflects this and provides the council with an opportunity to encourage responsible use of solid fuel burning appliances in domestic properties throughout the borough.

6. Community engagement

- 6.1. There is a statutory consultation process for the declaration of new SCAs.
- 6.2. A notice must be published in the London Gazette and in a local newspaper for two consecutive weeks. In addition, the Council must post, and keep posted, for 6 weeks notices at conspicuous places so as to give publicity to the order or intention to make it.
- 6.3. It is intended to use social and local media to further publicise the declaration and provide clarity on the rules of SCA. If more grant funding becomes available to do further publicity, targeted enforcement we will seek to apply.
- 6.4. Any objections received must be considered during the consultation process. If any objections are received and not withdrawn, the Council cannot make the order without first considering the objection. At the end of the consultation period the Secretary of State is empowered to confirm the order with or without any modifications. It is proposed that the Assistant Director for Planning, Transport & Public Protection will deal with these objections under the auspices of the proposed delegation in this report. If the responses to the consultation reveal issues which are substantial in their implications for the objectives outlined in this report, or significant unforeseen impacts for residents, then the Assistant Director will refer the matter back to Committee for further determination.
- 6.5. In the event that the Council resolves to make the new smoke control order it cannot come into effect earlier than 6 months from the date of making. This date may be postponed, subject to a resolution to that effect being passed and suitable publicity in line with that set out in the legislation (Schedule 1, Clean Air Act 1993).
- 6.6. The changes proposed do not impact on people who wish to have bonfires as this is covered by different legislation. However, the proposed publicity campaign would look to discourage bonfires by including messaging about the impact that bonfires can have on air quality and health.

7. Equality impact assessment

- 7.1. An Equality Impact Assessment has been carried out. People with certain protected characteristics (the old, young and those with certain disabilities) are more vulnerable to air pollution. People in vulnerable groups are also known to live in areas with more air pollution, so the proposal may have a differentially positive impact on these groups.
- 7.2. Due to the cost-of-living crisis more people are believed to have turned to burning solid fuel for heating. The introduction of a borough wide SCA would therefore affect more people than it would otherwise, potentially requiring them to pay more for fuel to keep warm.
- 7.3. The proposal would mean that people could only burn clean seasoned wood with the 'ready to burn' logo in exempt appliances, or authorised fuel. This would be more expensive for people who were reliant on foraging for wood as their main source of fuel.
- 7.4. The proposal would not have any implications on the two thirds of the borough already covered by SCAs as they are already subject to the rules, the proposal just brings the rest of the borough in line with this. Most modern, recently installed appliances would also already be compliant.

8. Other relevant considerations

8.1. Public health

- 8.2. PM2.5 emissions from solid fuel burning make up between 22-38% of total PM2.5 emissions. It is a particularly harmful pollutant with regard to human health, able to travel deep into the respiratory tract leading to numerous health conditions including asthma, lung cancer, cardiovascular disease, dementia and pregnancy loss.
- 8.3. All solid fuel burning releases harmful particulates, but this the proposal provides a mechanism to control the burning of the dirtiest forms of solid fuel and the appliances that they are burned in. Therefore, the proposal is likely to result in positive public health impact.

9. Legal implications

- 9.1. The Council has a discretion under Section 18(2A) of the Clean Air Act 1993 (the Act) whether to declare the whole, or any part of its area to be a smoke control area; by a smoke control order.
- 9.2. A smoke control order -
 - (a) may make different provision for different parts of the smoke control area;
 - (b) may limit the operation of section 20 (prohibition of emissions of smoke) to specified classes of building in the area; and
 - (c) may exempt specified buildings or classes of building or specified fireplaces or classes of fireplace in the area from the operation of that section, upon such conditions as may be specified in the order;and the reference in paragraph (c) to specified buildings or classes of building include a reference to any specified, or to any specified classes of, fixed boiler or industrial plant.
- 9.3. A smoke control order may be revoked or varied by a subsequent order.
- 9.4. Schedule 1 to the Act sets out the procedure which the Council must follow to make an Order, including publicising its intention to make an order and how objections may be made. If any objections are received and not withdrawn, the Council cannot make the order without first considering the objection.
- 9.5. If the Council resolves to make the new smoke control order it cannot come into effect earlier than 6 months from the date of making. This date may be postponed, subject to a resolution to that effect being passed and suitable publicity in line with that set out in the legislation (Schedule 1, Clean Air Act 1993).
- 9.6. Once any objections have been considered, if delegation is approved, the Assistant Director, Planning, Transport and Public Protection will authorise confirmation of the order. New orders must then be considered by and confirmed by the Secretary of State with or without modification.

10. Financial implications

- 10.1. There are not considered to be any significant budget implications besides officer time in setting up the new order, advertising the new order and providing publicity around it. The publicity will predominantly be online using social media and the website. Operationally any enforcement will be managed within the existing team budget. If further grant funding becomes available additional publicity and targeted enforcement would be carried out.

11. Timetable for implementation

- 11.1. There is a statutory consultation process (see section 6) which can commence once approval is given. The statutory consultation period is a minimum of 8 weeks (2 weeks of notices published in the London Gazette followed by 6 weeks of the plan being available for public inspection.)

- 11.2. If any objections are received within that period must also be considered, which is likely to add time to making the order.
- 11.3. After the Council resolves to make the new smoke control order it cannot come into effect earlier than 6 months from the date of making. This date may be postponed, subject to a resolution to that effect being passed and suitable publicity in line with that set out in the legislation (Schedule 1, Clean Air Act 1993).
- 11.4. This means that it would take a minimum of 8 months for an order to come into effect, but realistically would take longer due to the administration involved in the process.

12. Background papers

- 12.1. There are none.

Appendices

1. Smoke Control Areas in Reading

