

## Report to Scrutiny

Item Number:

Contains Confidential or Exempt Information	No
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**Subject of Report:** Bonfires

**Meeting:** Scrutiny Review Panel 3: Air Quality  
14 February 2019

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**Cabinet Responsibility:** Cllr Julian Bell (Regeneration and Transport)  
Cllr Mik Sabiers (Environment and Highways)  
Cllr Binda Rai (Health and Adults' Services)

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**Brief:** To consider the information provided on Bonfires and make recommendations accordingly.

**Recommendations:** The Panel is recommended to:  
- consider and comment on the information provided on Bonfires; and  
- make suggestions for further improvements appropriately.

## **1. Bonfires**

A Briefing Note on bonfires is attached to this report for the consideration of the Panel, detailing current bonfire complaint services and enforcement practice in the borough and providing a summary of online information available on bonfires.

## **2. Legal Implications**

The Council has a duty under s. 79, Environmental Protection Act 1990 (“the EPA 1990”) to inspect its area for statutory nuisance and to investigate complaints made to it by residents of statutory nuisance. This includes “smoke emitted from premises so as to be prejudicial to health or a nuisance” and thus encompasses smoke nuisance arising from bonfires. Section 80 of the Act provides that “where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority shall serve a notice (“an abatement notice”)”.

Section 33 of the EPA 1990 prohibits the unauthorised or harmful deposit, treatment or disposal of waste. The burning of commercial waste in a bonfire is a form of treatment of waste and, subject to certain exemptions, constitutes an offence. An amendment to the EPA 1990, section 33ZA, provides a power to English waste collection authorities (such as Ealing Council) to serve a fixed penalty notice (FPN) in relation to such offences. The FPN gives the perpetrator the opportunity to pay a fixed penalty as an alternative to prosecution.

Section 2 of the Clean Air Act, 1993, prohibits the emission of “dark smoke” from any industrial or trade premises. This includes the emission of such smoke from the burning of commercial bonfires. There are very limited exemptions and in most cases there must be no other reasonably safe and practicable method of disposing of the matter.

## **3. Financial Implications**

The operational functions for local air quality management and for statutory nuisance investigation and enforcement are funded from the existing budget within Safer Communities.

## **4. Other Implications**

Ealing’s air quality work provides a direct link to one of the council’s new priorities for the borough: *Working to make our borough a healthy and great place for all.*

## **5. Background Papers**

1. *Overview of Air Quality in the Borough*, Report to Scrutiny Review Panel 3: Air Quality, London Borough of Ealing, 19 July 2018. Available online at the following [link](#).
2. Fuller, G. W., Tremper, A. H., Baker, T. D., Yttri, K. E., & Butterfield, D. (2014). Contribution of wood burning to PM<sub>10</sub> in London. DOI: 10.1016/j.atmosenv.2013.12.037. Available online at [https://kclpure.kcl.ac.uk/portal/files/12227807/Atmospheric\\_Environment.pdf](https://kclpure.kcl.ac.uk/portal/files/12227807/Atmospheric_Environment.pdf)

## Consultation

<b>Name of Consultee</b>	<b>Department</b>	<b>Date Sent to Consultee</b>	<b>Date Response Received from Consultee</b>	<b>Comments Appear in Report Para:</b>
<b>Internal</b>				
Director	Executive Director			
Lawyer	Director of Legal Services			
Finance Officer	Director of Finance			
Councillor	Cabinet Member for			
<b>External</b>				
A N Other	Voluntary Organisation			
Police, etc.				

## Report History

<b>Decision Type:</b>	<b>Urgency item?</b>		
For Information	No		
Authorised by Cabinet Member:	Date Drafted:	Report Deadline:	Date Report Sent:
N/A		04/02/2019	04/02/2019
Report No.:	Report Author and Contact for Queries:		
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Appendix

Briefing Note on Bonfires

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## Scrutiny Review Panel 3: Air Quality 14 February 2019

### Briefing Note on Bonfires

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#### **Garden and allotment bonfires and other non-commercial bonfires**

It is not illegal to burn a garden bonfire, but the smoke from bonfires can easily cause a nuisance to neighbours and contribute to the worsening of air quality locally. For this reason the Council discourages the use of garden and allotment bonfires and recommends that an alternative method is used to dispose of garden waste, such as composting or disposal at a recycling facility.

Bonfire smoke can sometimes amount to what is considered a 'statutory nuisance' and in this case the Council can serve an abatement notice under section 80 of the Environmental Protection Act 1990 ("the EPA 1990"). Prosecution for breaches of an abatement notice can lead to a fine of up to £5,000.

#### **Bonfires on building sites and other commercial premises**

##### *Enforcement of "dark smoke" offences under the Clean Air Act 1993*

Except in a very limited number of circumstances, it is an offence under the Clean Air Act 1993 to emit "dark smoke" from a bonfire on industrial or trade premises. This includes both business premises and those "not so used on which matter is burnt in connection with any industrial or trade process." In other words, if for example there is a builder's bonfire emitting dark smoke from a residential property, this would be an offence under this legislation.

In the event that an offence leads to prosecution, the Act also provides that the Court can be satisfied that an offence has taken place even if the investigating officer did not witness dark smoke being emitted. This covers situations such as bonfires at night where the darkness of the smoke cannot be checked against a standard smoke scale and where there are the smouldering remains of materials such as plastics which would have been likely to emit dark smoke.

##### *Enforcement of commercial waste burning offences under the Environmental Protection Act 1990*

Bonfires on building sites and other commercial premises are usually lit to dispose of waste arising from the trade activity concerned, however under section 33 of the EPA 1990, burning commercial or trade waste is not allowed on any land without first registering an appropriate exemption with the Environment Agency. Consequently, businesses have a legal obligation to dispose of waste in a proper manner and may be prosecuted for failure to do so.

Under an amendment to this section of the Act, local authorities can now issue a Fixed Penalty Notice (FPN) of £400 for the burning of waste. In addition, failure to produce a waste transfer note when requested by an authorised officer is an offence under section 34 of the Act and there is an associated provision for an FPN of £300 for this offence. FPNs for both offences can be issued together and apply to commercial bonfires on both private and public land.

- In Ealing borough, the FPN route is now the preferred enforcement option for commercial bonfires.

## **Response Service**

The Council's Response Team deals with complaints from the public on a wide range of statutory nuisances including bonfire smoke. Whether the nuisance is arising within the borough or is coming from premises in another borough, officers can – subject to staff being available – visit to witness the nuisance and where appropriate, take enforcement action.

Where the smoke complained of is suspected as being from a commercial bonfire, the Response Team will refer the complaint to the Street Services Team's contractors Kingdom Services Group, whose officers are authorised to issue FPNs for commercial bonfire offences. Please note, however, that this enforcement route does not extend to complaints of commercial bonfire smoke arising beyond the borough boundary. In such cases, officers will make a referral to the neighbouring authority for investigation.

### Council contact details for bonfire complaints

- Complaints can be made via the Council's website (see Appendix), by phone on 020 8825 8111 or by e-mail on [pollutioncontrol@ealing.gov.uk](mailto:pollutioncontrol@ealing.gov.uk).

Planning Enforcement and Environment Team  
Regulatory Services  
Safer Communities and Housing

February 2019

## Appendix - Current advice on bonfires and commercial waste burning

### **Ealing Council's website**

[https://www.ealing.gov.uk/info/201199/air\\_quality/2056/bonfires\\_-\\_guidelines](https://www.ealing.gov.uk/info/201199/air_quality/2056/bonfires_-_guidelines) (accessed 15.01.19)

# Bonfires - guidelines

[Home](#) / [Neighbourhood and streets](#) / [Pollution](#) / [Air quality](#) / [Bonfires - guidelines](#)

Smoke from bonfires causes severe distress to sufferers of respiratory and other diseases, and can be a nuisance to neighbours drying laundry outside or enjoying their gardens.

There are no laws against having a bonfire, but there are laws for the nuisance they can cause if prejudicial to health or a nuisance to the neighbourhood. Offenders can be fined £5,000 (£20,000 for industrial, trade or business premises).

The council can take offenders to court if their bonfires cause a nuisance to neighbours, including having an unreasonable effect on their enjoyment of their home or garden. Action can also be taken if a bonfire on trade premises causes dark smoke. This is an offence under section two of the Clean Air Act, with a fine of up to £20,000.

Before lighting a fire in the open, please observe the following guidelines:

- check weather conditions and wind direction so that smoke and ash will be carried away from neighbours' windows and gardens, and make sure that there is no laundry hanging in adjoining gardens
- only burn dry, natural and untreated materials
- compost or bury soft vegetable waste and grass cuttings
- do not burn oily rags, rubber and other materials
- do not leave your fire unattended or smouldering for long periods, and hose it down until the bonfire is cold before you leave it
- advise neighbours before you light a bonfire
- burn material quickly in small quantities so that a minimum of smoke is created
- site your bonfire well away from trees, fences and windows, avoid windy days, and have a hosepipe or buckets of water ready nearby
- rake ashes into the soil when cold, picking out larger pieces of charcoal first

[Report a nuisance from a bonfire](#)

## Government website

<https://www.gov.uk/garden-bonfires-rules> (accessed 15.01.19)



[Home](#) > [Housing and local services](#) > [Safety and the environment in your community](#)

# Garden bonfires: the rules

There are no laws against having a bonfire, but there are laws for the nuisance they can cause.

## Burning domestic waste

You cannot get rid of household waste if it will cause pollution or harm people's health. This includes burning it.

You can get rid of household or garden waste by composting or recycling it. Contact your local council to find out how to [dispose of garden waste](#) and about [recycling in your area](#).

You could be fined if you light a fire and allow the smoke to drift across the road and become a danger to traffic.

## Complain about a neighbour's bonfire

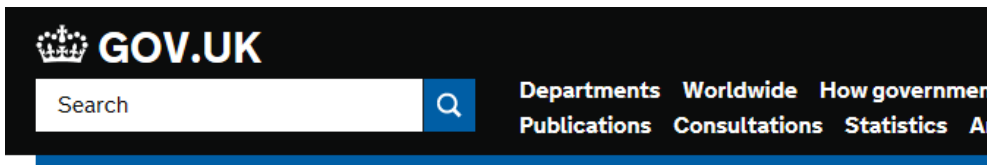
Your council can issue an 'abatement notice' if a neighbour's bonfire is causing a nuisance. A bonfire must happen frequently to be considered a nuisance.

Your neighbour can be fined up to £5,000 if they don't follow the rules of the notice.



## Government website

<https://www.gov.uk/guidance/waste-exemption-d7-burning-waste-in-the-open> (accessed 29.01.19)



[Home](#) > [Business and industry](#) > [Business and the environment](#)

Guidance

# Waste exemption: D7 burning waste in the open

This exemption allows you to burn plant tissue and untreated wood waste from joinery or manufacturing in the open air.

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Published 28 April 2014

Last updated 21 December 2015 — [see all updates](#)

From: [Environment Agency](#)

## Type of activity you can carry out

This includes:

- a landscape gardener has trimmed hedges and branches and wants to burn them on a bonfire at the same place

## Types of activity you can't carry out

You can't:

- burn other types of waste other than those listed below
- bring waste from elsewhere to burn
- burn treated wood waste or wood waste coming from any source other than listed
- use this exemption to burn waste in an incinerator for disposal (see related exemptions)
- use this exemption to burn waste in a boiler to produce heat and power (see related exemptions)

Householders burning their own garden waste don't need to register any waste exemptions.

## Types of waste you can treat

The waste codes are those listed in the List of Wastes (LoW) Regulations. You need to make sure your waste fits within the relevant waste code and description.

Waste code	Type of waste
020103, 020107, 200201	Plant tissue
030105	Sawdust, shavings and cuttings from untreated wood only
030301	Waste bark and wood

## Quantity of waste you can treat

You can:

- burn up to 10 tonnes of waste in any 24 hour period
- store up to 20 tonnes of waste at any one time
- store waste for up to 6 months before burning, to allow certain wood waste to dry out

## Key conditions

The burning must take place on open land, not in an incinerator or a building.

You should be careful to position the bonfire where it will not cause nuisance to neighbours through excessive smoke or odour.

The burning must take place only at the place where the waste is produced.

## **GLA website**

<https://www.london.gov.uk/what-we-do/environment/pollution-and-air-quality/guidance-wood-burning-stoves-london> (accessed 21.01,19)

### **Bonfires and barbecues**

Bonfires and barbecues are not banned by the Clean Air Act, but if you create a lot of smoke you may be causing a statutory nuisance.

Burning garden waste on a bonfire is unnecessary and unpleasant for your neighbours. Many boroughs operate garden waste collection schemes, access to home composting or provide facilities to drop off waste. To find out how to dispose of your garden waste responsibly contact your local borough.

Barbecues can also be unpleasant for other people. If you regularly have a barbecue in your garden you should think about using a gas alternative.

## **Environmental Protection UK (EPUK)**

EPUK publishes a leaflet on Garden Bonfires that can be accessed at <https://www.environmental-protection.org.uk/wp-content/uploads/2016/03/Garden-Bonfires.pdf>