

Report of: John Copley

To: Health Scrutiny

Date: 19.01.06

Item No:

Title of Report : Findings from the consultation on whether Oxford supports national draft legislation to restrict smoking in public places.

Summary and Recommendations

Purpose of report: To inform Health Scrutiny on the results of the recent consultation looking at whether there is support for national draft legislation on whether to restrict smoking in public places.

Key decision: No

Portfolio Holder: Councillor Maureen Christian

Scrutiny Responsibility: Health

Ward(s) affected: All

Report Approved by: Imogen Wooder (Legal) and Tony Collett (Finance)

Policy Framework: The consultation exercise was an action in the 2005/2008 Oxford Plan which required the Council to assess the desirability of a smoking ban in Oxford (ref. 1.5.10). The process also adhered to the 2004 – 2007 Consultation Strategy.

Recommendation(s):

That Health Scrutiny agrees to;

Oxford publicly supporting Government proposals to restrict smoking in public places.

A further report being produced on the resource implications of a ban when the legislation is finalised and enforcement becomes a reality.

Consider the request that local businesses affected by the finalised legislation will need support, information and guidance from the Council to help them understand the details and how it will be enforced.

1.0 Background

- 1.1 On the 24th January 2005 the Council passed a motion that the Executive Board should consult with the people of Oxford on whether they wish to have a smoking ban in all public places. On the 9th May 2005 Executive Board agreed to the approach the Council should take when consulting the people of Oxford.
- 1.2 On the 17th May 2005 the Government introduced the Health Improvement and Protection Bill. This bill stated that all workplaces, including restaurants and pubs selling food, will have to have a ban in place by summer 2007.
- 1.3 It was decided that the consultation Oxford City Council was doing should reflect the Bill so Oxford could have an opportunity to have its say on national draft legislation.

2.0 Introduction

- 2.1 This report discusses the findings from the consultation exercise and begins to consider the implications for the Council in light of the survey and Central Government's plans to have a restricted ban in place by summer 2007.

3.0 Methods of Consultation

- 3.1 The public of Oxford were given the opportunity to feedback their views via a survey. To ensure the consultation was an efficient and cost effective process the surveys were produced in existing Council publications eg. within Your Oxford, within a Talkback Panel survey and on an online survey was put on the website.
Key stakeholders/individuals within the city, who might be affected by the legislation in a different way, were invited to provide more detailed commentary on the draft legislation.

4.0 Assessing public opinion

- 4.1 In order to assess the views of the citizens' of Oxford:
 - A survey was included in the latest edition of Your Oxford (details of the results can be found in appendix 3)
 - A survey was put on the website (details of the results can be found in appendix 4)
 - Questions were included in the latest Talkback survey (details of the results can be found in appendix 5)1147 people responded to the survey. On an observed statistic of 50%, a sample size of 1147 is subject to a standard error of +/-2.89% at the 95% level of confidence.

4.2 A key stakeholder list was drawn up based on similar consultation exercises employed by other local authorities. Please see appendix 1 for the list. These consultees were sent a letter and details of the draft legislation and asked to respond to the contents. They were allowed to respond through a variety of ways:

- Email
- Interview
- Letter
- Phone

Of the 19 who were invited to respond, 10 responses were received.

A. Consultation Findings

The table below summarises the key findings from the public surveys.

Survey	Key findings	Number of respondents
Online survey	<ul style="list-style-type: none"> • 81% are bothered a great deal or a fair amount by tobacco smoke • 95% of respondents agree that “all employees have the right to work in a smoke-free environment” • 63% of respondents said they would prefer both indoor and outdoor public places to be smoke free and 26% would prefer it for indoor places only. • 11% would prefer public places not to be smoke free • Respondents were not as clear as to whether to make pubs and bars completely smoke free – 61% would prefer them smoke free and 25% mainly smoke free compared with cafes and restaurants where 83% said they would prefer them to be completely smoke free. 	97
MORI Survey	<ul style="list-style-type: none"> • 70% are bothered a great deal or a fair amount by tobacco smoke • 89% of panellists agree that “all employees have the right to work in a smoke-free environment” • 32% of respondents said they would prefer both indoor and outdoor public places to be smoke free and 54% would prefer it for indoor places only. • 14% would prefer public places not to be smoke free • Respondents were not as clear as to whether to make pubs and bars completely smoke free – 42% would prefer them smoke free and 43% mainly smoke free compared with cafes and restaurants where 68% said they would prefer them to be completely smoke free. 	355

Your Oxford Survey	<ul style="list-style-type: none"> • 89% are bothered a great deal or a fair amount by tobacco smoke • 93% agree that “all employees have the right to work in a smoke-free environment” • 61% of respondents said they would prefer both indoor and outdoor public places to be smoke free and 32% would prefer it for indoor places only. • 7% would prefer public places not to be smoke free • Respondents were not as clear as to whether to make pubs and bars completely smoke free – 67% would prefer them smoke free and 25% mainly smoke free compared with cafes and restaurants where 87% said they would prefer them to be completely smoke free. 	695
Overall	<ul style="list-style-type: none"> • 81% are bothered a great deal or a fair amount by tobacco smoke • 90% agree “all employees have the right to work in a smoke free environment” • 9% said they wouldn't like it if all public places (indoors and outdoors) became completely smoke free. • 81% said they would prefer cafes and restaurants to be completely smoke free but only 59% thoughts pubs and bars should be. 	1147 *(+/-2.89% at the 95% level of confidence)

The results show that residents living in Oxford support restricting smoking in public places and for the introduction of national legislation and enforcement. However, as with the current national debate over the details of the draft legislation there is less agreement over whether pubs should be completely smoke free.

The table below summarises the key findings from the stakeholders.

Representative	Key Points Raised
Community Fire Safety Officer	<p>The general points raised by the Oxford City Community Fire Safety Officer are: How are enforcing authorities to distinguish between tobacco and non tobacco products? It would seem acceptable to allow smoking in 'Drinking' pubs, although it appears possible to include a provision of non smoking areas with adequate ventilation in such establishments. It seems this approach will be similar to that of the ban on using mobile phones whilst driving. The enforcement will only be as effective as the resources behind it. The officers likely to be given the task of enforcing this legislation already have a 'full plate' and once the initial interest has died down it will be down to following up complaints from members of the public. It will not be pro active.</p>
Oxford University (Occupational Health Service)	<p>Overall, the intention to restrict smoking in enclosed public places and workplaces is consistent with actions already undertaken by the University to improve and protect health. In particular, the University has had a smoking policy for many years which, inter alia, precludes smoking in all University buildings from effect 1 March 2006. This policy was recently revised after a process of consultation with departments and staff. The Govt legislation, in effect, will just reinforce the basis of this policy. In relation to its varied public places, I am not aware of any difficulties that the University has or will have in relation to the Bill.</p>

Trading Standards	<p>Delighted with the proposals to ban smoking in public and working places. From the practical point of view, the changes will not affect the Trading Standards staff in their own workplace but the changes will avoid the need for my staff to endure a smoky environment while performing their official duties in pubs, clubs and similar business premises. I would hope that when the new provisions come into force and the City Council begins its enforcement that we could liaise further, particularly in respect of passing information about the trading practices of the business inspected/complained about.</p>
ASH	<p>There is overwhelming evidence on secondhand smoke as a serious health and safety risk, and the enormous public health benefits to be gained from ending smoking in all workplaces, the case for a comprehensive smokefree law is decisive. A comprehensive smokefree law would be popular, simple, easy to enforce and would lead to a dramatic improvement in public health. The Government should find the political courage to introduce the legislation.</p>
TMA (Tobacco Manufacturing Association)	<ul style="list-style-type: none"> • We do not believe that the proposed legislation to restrict smoking in enclosed public places and workplaces is necessary or justified. We firmly believe that the Government's objectives can be achieved through voluntarily adopted self-regulation. Such self-regulation has already delivered, and continues to deliver, considerable results within the workplace and in other public places. • Given, however, that the Government appears intent on introducing legislation we support the Government's attempt to achieve "the right balance between responsibilities and freedoms," in particular by maintain the freedom to smoke in certain pubs and clubs. • That said, we believe that a practical and proportionate approach would be to additionally permit smoking separated designated smoking rooms in all workplaces, including officers, restaurants, pubs etc where is reasonable be practicable. Such an approach would also reflect the weight of public opinion.
Members (6)	<p>A summary of some of the comments made are:</p> <ul style="list-style-type: none"> - Inequalities in illness and poor health for non smokers as a result of the partiality aspect of the ban - Human rights issue for non smokers - Importance of recognising the dangers of passive smoking - Police need to help with enforcement <p>However, there was some disagreement with banning smoking in public places, and the legislation unnecessary. Other issues which were raised included:</p> <ul style="list-style-type: none"> - Too many signs already in most public places and a single discreet sign to which smokers' attention can be drawn is all that is needed - Smokers also have rights and it must be possible for enclosed rooms in workplaces to be allocated for smoking - Clarity needed over "all licensed premises" eg. how will temporary licence holders, such as marquees, Church halls be treated? - For the industry to promote its own policy - The ban is too prescriptive eg. a club must be free to make and enforce its own rules
Oxford City Primary Care Trust	<p>Support for a public smoking ban as smoking is the most important modifiable/preventable causes of premature death. Approximately 70% of smokers would like to give up but find it hardest in a social environment, a ban will help those trying to quit However 2 major concerns:</p> <ol style="list-style-type: none"> 1) Need to be aware that a total ban might drive smoking into the home. This will put more vulnerable people eg young people at risk. 2) The partiality of the ban might widen the social divide as smoking pubs and clubs will become concentrated in poorer communities and thereby exacerbate health inequalities. 3) The majority of smokers find it hardest to give up smoking when in a social environment, therefore the smoking ban will help these people. <p>If there is support for a ban, Oxford City Council should move forward in stages to ensure enforcement will be more trouble free and straight forward. It is important to that they work with Central Government</p>

Thames Valley Police	Supports the ban but comments were given with regards to specific details of the legislation. Comments were raised over: <ul style="list-style-type: none"> - How can you tell if tobacco smoke? - What if some places serve food at lunch time but not in the evening? - There should be discretion for making places of detention exempt - Support for the enforcement is with local authorities - Experience suggests on the spot fines to be a suitable method
OX1	In principle, notable support for the ban. However, a few concerns were raised: The Council should ensure to take guidance from forthcoming Government legislation. Oxford City Council should help particular places that may be having difficulty understanding the legislation and/or may have concerns over economic impact To try and encourage/work with pubs to sign up voluntarily prior to national legislation being introduced If the council does choose to take a lead it needs to be managed carefully in the media.
Oxford City Council Environmental Health Team	It is hoped that any finalised legislation/guidance will remove the ambiguity around exemptions and definitions that appear in some of the earlier discussion documents.

5.0 National Consultation and Other research findings

- 5.1 The results and concerns raised from Oxford's consultation reflect the outcomes from the national consultation and other research.

The Office of National Statistics has shown a large increase in support for restriction of smoking in pubs from 48% in 1996 to 65% in 2004. In April 2004 MORI were commissioned to conduct a poll of 4,000 adults. 79% supported the proposal to ensure all enclosed workplaces to be smoke free.

In May 2004 15% of smokers said they would quit smoking if a ban was introduced.

A recent poll by FOREST found 29% favour the current voluntary approach, with employers asked but not forced to make more places smoke-free and 28% would support an outright ban with no exemptions

6.0 Update on reaction to draft legislation

- 6.1 On the 19th December the details of the draft legislation were criticised by the Commons Health Select Committee who stated that a total ban is the "only effective means of protecting public health" since the current Health Bill would allow smoking to continue in private clubs and pubs that do not serve food. LACORS (Local Authorities Coordination of regulatory services) also advised that Committee that a partial ban would result in confusion for public and businesses alike and estimates suggest that enforcement costs for a partial ban could be nearly 50 per cent higher than those for a total ban."

7.0 Support for smoke free public places in Oxford

As part of its Occupational Health Policy, Oxford City Council recognises the benefits to its employees of working in a smoke free

atmosphere, and the potential damage to the health of those who smoke and smokers are required not to smoke in buildings and more recently smoking has been banned in Council owned vehicles. Unison supports the policy and has similar concerns.

Oxford City Fire and Rescue has a no smoking policy.

County Hall has a no smoking policy.

The City Primary Care Trust (PCT) and all the NHS bodies are intending to be smoke free by 2006. The PCT in particular are extremely supportive of any move to have smoke-free premises. The Oxfordshire Tobacco Control Alliance is similarly supportive.

Thames Valley Police has adopted a smoke free work environment

8.0 Enforcement – Existing & New Provisions

- 8.1. Current City Council powers for public places are limited in scope and are contained within environmental health legislation, specifically in relation to health & safety and food protection. Employers have a duty of care to ensure, as far as is reasonably practicable, the health, safety and welfare at work of all their employees. Under the Workplace (Health, Safety and Welfare) Regulations, employers have to ensure that there are arrangements to protect non-smokers from discomfort caused by tobacco smoke in rest rooms or rest areas. Where a specific risk to health can be demonstrated, for example a worker with a respiratory condition being forced to work in a very smoky environment, the employer must take effective action to deal with the risk. Food protection powers relate to food businesses and the avoidance of contamination, eg by burnt tobacco products or micro-organisms linked to smoking. Hence it can be seen that whilst there are controls presently available, they fall far short of an enforceable outright ban on smoking.
- 8.2 Within the existing law it is not possible to introduce a simple ban on smoking in workplaces or in public places. Further but limited action can only be taken in the form of policy implementation under the power of the Local Government Act 2002 S.2 which provides that Local Authorities may do anything which they consider is likely to achieve one or more of the objectives of promoting or improving the social, economic and/or environmental well being of the area or persons (See Appendix 6). However, the published guidance indicates that the power should not be used for regulatory purposes and therefore it would be inappropriate to use it to introduce a smoking ban.
- 8.3 The City Council should await the finalised legislation and guidance before attempting to evaluate the implications in detail. Much will depend upon exactly what the Government requires of enforcing bodies and the relevant timescales. The Council will of course need to

ensure that it is able to meet any prescriptive minimum but, may also decide to be more interventionist, especially during the early stages of the new regime. Irrespective of the extent of prescription, there are likely to be resource implications since this amounts to new work and affects many thousands of businesses throughout the City. It is hoped that any finalised legislation/guidance will remove the ambiguity around exemptions and definitions that appear in some of the earlier discussion documents.

9.0 Conclusion

The Motion passed by Council to consult the people of Oxford on whether they wanted a smoking ban coincided with Central Government's draft legislation and their consultation on whether to restrict smoking in public places. The timing of the two consultations has given local people an opportunity to be involved in a national debate.

The results emerging both locally and nationally are similar with overall support from residents for a ban.

However, the consultation did reveal that the partiality of the ban has caused some concerns, most noticeably those who work within health and local authorities. They have raised concerns about the complexity of enforcing and regulating such a ban, how it might exacerbate health inequalities and how the different policies from the partiality of the ban will be confusing for local businesses.

The consultation exercise carried out in Oxford was a cost effective way of involving local people and key individuals across the city and hearing their views about the issues. It was also an ideal opportunity to inform individuals on the Government's proposals and draft legislation.

Recommendations

That Oxford City publicly supports Government proposals to restrict smoking in public places.

A further report being produced on the resource implications of a ban when the legislation is finalised and enforcement becomes a reality.

To consider the request that local businesses affected by the finalised legislation will need support, information and guidance from the Council to help them understand the details and how it will be enforced.

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