

Bonfires – Information for 2012 AGM

1. BACKGROUND

- a) At the AGM in April 2010 the shareholders of the Society voted to ban bonfires from the allotment field.
- b) In order to make sure members could research the facts and consider their views, *four weeks* prior to the April 2010 AGM a discussion paper relating to bonfires was sent out to members. This paper laid out the situation and the views and recommendation of the Committee. This paper is attached as **Appendix 1**.
- c) The relevant extract of the minutes from the 2010 AGM are attached as **Appendix 2**.
- d) At no time has it been stated by any member of the Committee that there is a ban on bonfires in Milton Keynes.

2. CURRENT SITUATION

- a) In February 2012, a petition was handed to the Committee. The wording of the petition is attached as **Appendix 3**.
- b) The Constitution of the Society only allows changes to ByLaws to be made by the shareholders at a General Meeting. The organiser of the petition was asked to propose the changes indicated in the petition.
- c) Milton Keynes Council has stated that its position has not changed.
- d) The advice from the National Society of Allotment and Leisure Gardeners (NSALG). The NSALG's advice is to be guided by the local authority. If the Council's advice is ignored then we will not receive legal support from the NSALG.

3. INSURANCE POLICY

Since the 2010 AGM our insurance provider has changed. This is an extract from Public and Products liability – the policy wording: (see web site for full policy document)

What is not covered:

Burning of debris

3. any fire that has been started, or any flame or use of heat that has been applied by you or any of your members unless:

- a. the fire is sited, or the flame or heat is applied, within the boundary of one of your allotment sites; and
- b. the fire is sited, or the flame or heat is applied, no less than ten metres from any building outside the boundary of the allotment site; and
- c. suitable fire extinguishing equipment is kept available for immediate use; and
- d. all fires and flames must be extinguished and a thorough fire safety check undertaken at least one hour prior to leaving the allotment site

Extract from policy renewal notice

Warranties

The law presently states that an insurer does not have to pay a claim where there has been a breach of warranty, regardless of whether the breach is material to the loss. If a breach of warranty occurs, the insurers can also avoid (cancel) the policy from inception date and return any premiums that the insured has paid. This therefore means that an insured:

- Must repay any claims that had already been notified and paid in the current insurance year
- Will not have any cover for any claims still outstanding during the policy year
- Will not be covered for any claims or losses not yet advised to the insurers.

4. i **BONFIRES AND THE LAW – A summary from Milton Keynes Council**

(Website link: www.milton-keynes.gov.uk/environmental%2Dhealth/DisplayArticle.asp?ID=29284)

- a) All bonfires are anti-social and give off toxic and carcinogenic fumes.
- b) Where smoke causes a nuisance to the neighbouring properties, the smoke can be deemed a Statutory Nuisance under the Environmental Protection Act 1990.
- c) If any smoke from your bonfire affects neighbouring properties or people then you will have caused a Statutory Nuisance because the toxic materials in the smoke are 'prejudicial to health'.
- d) It is impossible to light a bonfire in Milton Keynes without toxic fumes and pollution from it affecting other people, thus if you do light a bonfire you will almost certainly have caused a Statutory Nuisance.
- e) If the council is satisfied that a Statutory Nuisance exists or is likely to occur or recur, we must serve an Abatement Notice. The penalty for contravention of a Notice under the above Act could be a fine up to £5000, and a daily penalty of up to £500 if the offence is repeated following an earlier conviction.
- f) It is also an offence under the Highways (Amendment) Act 1986 to light a fire and allow smoke to drift across a road.

4. ii. **SUMMARY OF PROCEEDINGS FOR STATUTORY NUISANCE**

- a) An abatement order can be served even if the nuisance has not yet occurred.
- b) If the person responsible for the nuisance can not be found then the owner of the premises is served with the notice (ie. Allotment Society).
- c) If served with an abatement order, you can appeal to a Magistrates' Court within 21 days. (See 2d on previous page).

5. What next?

- a) A petition to reinstate bonfires has been given to the Committee. The Committee did not change the ByLaws in 2010 and cannot make the decision to alter the ByLaws now.
- b) A proposal to reinstate bonfires has subsequently been received (Item 6 of the AGM agenda).
- e) The Committee wishes to ensure that all members of the Society have the relevant information and have the opportunity to discuss the situation based on facts and so decided to reproduce the paper sent out for the 2010 AGM (without any changes) and to produce this paper so that members of the Society are given information about Bonfires and the Law, the insurance policy and links to websites. (The draft of this paper was delivered to Ralph Pursell in March.)
- c) It is most important that you read this information and you may find it useful to look at the documents on the web site or follow the links so that you are aware of the stance of Milton Keynes Council.
- d) The Committee's responsibility is to place the facts before shareholders. It is the shareholders who make the decision by way of a vote at the AGM. Under our Constitution (see web site) only shareholders can vote for changes to the ByLaws.

The following documents are on our website:

Insurance Policy

MK Information about Bonfires

MK Environmental Health – Procedures about dealing with Bonfires

Appendix 1: Paper sent to all plot holders four weeks prior to 2010

AGM

Bonfires: Proposed Amendment to the ByLaws

Background

In 2009 the Environmental Protection Team Leader of Milton Keynes Council warned the Society that there had been complaints about Bonfires and should there be further complaints, an Abatement Order was likely to be issued. Should there be further, justified complaints after that, a fine could be imposed of up to £5,000.

The papers relating to this are on the Society's website and were distributed to members who do not have email addresses. (If you have not yet read these papers, it would be helpful to do so before the AGM.)

Following the warning, the Committee decide to ban bonfires. To help members, in the Autumn, a skip was hired and a designated area for compost has been set up next to the Bow Brickhill Road entrance.

The issue of bonfires has caused ongoing problems for a number of years and, while some members are thoughtful of the Allotment Field's neighbours, some are not. Given the stated position of Milton Keynes Council and the inconsiderate actions of some members of the Society, the Committee thinks it is now time to make the ban on bonfires permanent.

In reaching this recommendation the Committee considered the following:

- 1. Keep the regulations about bonfires as they currently stand in the Bylaws.*
- 2. Keep the regulations about bonfires as they currently stand in the Bylaws with additional conditions.*
- 3. Have a designated bonfire area and anyone is allowed to set fire to bonfires.*
- 4. Have a designated bonfire area and a designated person to set fire to the bonfire.*
- 5. Ban all bonfires from the site. (Have compost areas at suitable points on the field and a skip once or twice each year.)*

In looking at each of the options the following issues were considered:

- a) Members already disregard the current Bylaws by leaving bonfires unsupervised, burning inappropriate materials and lighting them when the wind is blowing towards the houses.*
- b) If bonfires are reinstated and there are further complaints, an Abatement Order will be issued. If this was the case the bonfire ban would have to be put back. If it was not and a fine was imposed, the only way to pay will be via a levy on all members.*
- c) The Committee's view is that it is only a matter of time before another complaint is made and an abatement order imposed.*
- d) If we have a designated area, where will it be? If it is near the Bow Brickhill Road entrance, there are implications for setting fire with regard to car parking, traffic and neighbours. (Highways Act 1986: anyone lighting a fire and allowing smoke to drift across the road faces a fine of up to £2000 if it endangers traffic.)*
- e) If a designated area and anyone sets fire – where will it be? If it is a current plot, what are the implications for the neighbouring plots? Access might also be an issue.*
- f) If a designated person – who will it be? A volunteer will be needed from amongst the members (no one on the current Committee is prepared to undertake this).*
- g) If a designated area and a designated person how would the material be kept dry?*
- h) Our insurance policy states that bonfires must be at least 10m away from buildings, that they should not be left unattended and a means to extinguish should be available (eg. bucket of water). Fires need to be extinguished at least one hour prior to leaving the site at the end of each working day. "The law presently states that an insurer does not have to pay a claim where there has been a breach of warranty, regardless of whether the breach is material to the loss."*

Advice was sought from the Council:

In February, the Secretary met with the Air Quality Officer for MK Council.

He stated the following:

- ◇ There is no law against bonfires.
- ◇ There is an issue about nuisance.
- ◇ There have not been many complaints about nuisance smoke from our site.
- ◇ If there are any complaints about bonfire smoke, the Environment Protection Team must investigate.
- ◇ We do not have an enforcement order in place.
- ◇ If an enforcement order is put in place we would be prosecuted if there was another bonfire after the order was imposed.
- ◇ Incinerators are considered in the same way as bonfires.
- ◇ He has investigated the collection of green waste but there is no facility for large sites.

The following issues were discussed the Officer:

1. **Having a designated area for bonfires:** Some allotment societies have this facility. Only dry waste, that cannot be easily composted, is allowed on the bonfire and only one designated person is allowed to set fire. Sites do have problems with people putting inappropriate material on the bonfires.
2. **Our new compost area:** He advised that this is the best way forward and it is what many sites are now doing. Some sites have several large compost bins along their tracks.
3. **Diseased waste:** The only diseased waste that should not be composted is white onion rot, tubers of potatoes affected by blight & tomatoes affected by blight. The hulms of these plants can be composted. He advised viewing gardenorganic.org.uk for further details.

Advice has also been sought from the National Society. The NSALG's advice is to be guided by the local authority. If the Council's advice is ignored then we will not receive legal support from the NSALG.

Given the points covered above the Committee is proposing the following change to the Bylaws:

Currently the Bylaws state:

Item 8:

Bonfires may not be lit between 1st June and 30th September each year. At other times they will be kept to minimum, and will be fully supervised. Members shall take every precaution with bonfires and shall at all times avoid smoking the nearby housing estate. The burning of plastic, rubber, and carpets or other toxic materials is strictly forbidden. (In the event of a wet summer period, the Committee may agree to lift the summer ban and will inform Members accordingly.)

Proposed Change

Item 8:

Bonfires are not allowed on the Allotment Field.

Appendix 2: Extract from the minutes of the 2010 AGM

6. Proposed Changes to ByLaws: Bonfires

Papers relating to this proposal were circulated to members four weeks prior to the AGM. The Secretary was asked to outline the Committee's proposal. In summary:

- i. The Committee had made this proposal reluctantly. However, it was the Committee's responsibility to look after the interests of the Society.*
- ii. Milton Keynes council had made it clear that it would place an abatement order and then fine the Society should there be a breach of the order.*
- iii. Some plot holders were unable to manage bonfires sensibly.*

The following summarises the subsequent debate:

- Ralph Pursell suggested additions to the current ByLaws of fines for anyone failing to follow the rules. He said that he understood that other allotments in the area do not have a problem*
- David Higgs stated that in the 34 years he had lived in Tidbury Close, he had rarely been disturbed by bonfires. If people live next to allotments they should expect typical allotment noise and bonfires.*
- Val Symon said that while Alan had been secretary they had countless 'phone calls complaining of bonfires.*
- Geoff Cooke, another resident of Tidbury Close, stated there had been few complaints to the council because residents had put up with the nuisance. Apart from dealing with blight he saw no need for bonfires and stated that plot holders need to be more thoughtful.*
- In response to a question from Barry Byrne, it was stated that the threatened fine could be up to £5,000.*
- Pauline Byrne stated that people put inappropriate materials on the compost heap.*
- In response to Colin Smith's question about when shredding would take place and by whom, it was stated that the nesting blackbirds had prevented shredding but the date would now be in August and Andy Malleson had already been booked to do the work. It was likely that a second shredder would be hired.*

A vote was then taken on the proposal to alter the ByLaws to read:

Bonfires are not allowed on the Allotment Field.

Vote: 31 for 12 against 1 abstained from voting

The motion was therefore carried.

Appendix 3: Petition handed to the Committee – February 2012

F.A.O. The Committee of Woburn Sands and District Allotment Society Limited

With regard to the resumption of bonfires on the allotment field, of course with satisfactory safeguards, we the undersigned request that the Committee give due consideration to the following points:

- Although the members voted for a ban, it is on reflection that they feel they were rather pressed ganged into this decision. Since that time it has become apparent that Milton Keynes does not have a blanket ban on any of its allotment sites.
- We would suggest an amendment to “Draconian” By Law number 20 to something such as “No bonfires are allowed on the allotment field between 1st May and 31st August, there being no exception to this. Anyone contravening this shall pay a fine of £200.00 or have the option of leaving the Society. Should a second contravention occur, this would be considered to be conduct detrimental to the Society.”
- We would suggest adding “Bonfires will be allowed from 1st September through until 30th April but during this period, smoke must not be allowed to blow onto Tidbury Close. Anyone contravening this shall pay a fine of £200.00 or have the option of leaving the Society. Should a second contravention occur, this would be considered to be conduct detrimental to the Society”

N.B. A clear indication of the wind direction can clearly be seen on Phil Rowe’s plot, as he has a flag flying. Others could soon be erected for the same purpose, and it is quite clear that for a bonfire to be lit the wind must be blowing from the East, North-East or South-East.

The Committee must consider that this is the wish of the shareholders.

Signed:

67 signatories of whom 64 are shareholders
(an addition sheet with 7 signatures has since been received)