

Subject:	Fundraising – George Street, Hove		
Date of Meeting:	3 December 2018		
Report of:	Executive Lead - Strategy, Governance & Law Executive Director - Neighbourhoods Communities & Housing		
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Ward(s) affected:	All Wards		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report sets out the detail requested by this Committee on 8 October 2018 regarding the options for curtailing street fundraising activity on George Street, Hove.
- 1.2 This Committee is asked to agree the proposed approach for curtailing street fundraising on George Street.

2. RECOMMENDATIONS:

- 2.1 That the Committee resolve for officers to pursue negotiations with the Institute of Fundraising with the aim of entering into a new or amended Site Management Agreement as set out in paragraphs 3.10-3.14 of the report.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 A letter was presented to the NICE Committee meeting on 8 October 2018 which raised the issue of charity 'chuggers' obstructing members of the public and in some instances intimidating passers-by. A copy of the letter is attached at Appendix 1.
- 3.2 A meeting has taken place with representatives of businesses, residents and managers of charity shops to obtain views. A summary of the concerns raised is attached at Appendix 2.
- 3.3 The outcome sought by those who have expressed their views to the Council is for fundraising activity on George Street to be restricted to event-based fundraising. This is where the fundraisers have a flag, stall or marquee and people who wish to can choose to approach the stall or marquee rather than having individual fundraisers approach them. Currently, in addition to event

based fundraising, street fundraisers (also known as 'chuggers') are all along George Street. This means that it is difficult to avoid being approached.

- 3.4 Whilst most approaching of street fundraisers is not said to be in an aggressive or intimidating manner, it is the approaching in itself that is reported as having negative effects on some passers-by.
- 3.5 George Street, Hove has many charity shops and these charity shops have many volunteers with special needs and mental health issues. Volunteering presents the opportunity for socialising in the community and gaining skills. However, some volunteers have been found to be unable to cope with being approached by street fundraisers and this has presented a barrier to them arriving in the morning or returning after their lunch break.
- 3.6 Further, the representations made are that many shoppers on George Street, Hove are either vulnerable or elderly and being approached by street fundraisers that are not in a fixed place makes it hard for them to avoid being approached. There are reports of elderly shoppers routinely giving out their direct debit details in order to be able to pass on and then for their relatives or carers having to undo this following each visit. George Street, Hove is a 'tunnel' whereby there are limited options to exit the street. Entrance and exit is in the main through the top and bottom end of the street. The only exception is one small passage way leading to the Tesco car park.

Options

- 3.7 The options for restricting street fundraising on George Street, Hove are as follows:
 - A. Enter into a voluntary agreement with the Institute of Fundraising;
 - B. Rely on an existing bye law on 'touting';
 - C. Seek to create a new bye law ;
 - D. Seek to make a Public Space Protection Order under the Anti-Social Behaviour, Crime and Policing Act 2014.
- 3.8 Each of these options are considered below.
- 3.9 Voluntary agreement with the Institute of Fundraising
- 3.10 The Institute of Fundraising is the professional membership body for charity fundraising in the United Kingdom. The Institute works with local authorities and Business Improvement Districts (BIDs) to establish co-regulatory agreements. These are called Site Management Agreements (SMAs) and they set controls on where and when fundraising can take place.
- 3.11 The Institute make sure that their members stick to the agreement through a programme of spot checks, mystery shopping and co-regulation with the Council.

Breaches of the conditions of the SMA attract penalty points for the employers/contractors of fundraisers under a penalties and sanctions regime.

- 3.12 There is currently a Site Management Agreement in Brighton and Hove (a copy is attached at Appendix 3). This was set up by the Brighton BID and includes George Street, Hove. The current restriction for George Street, Hove is a maximum of four fundraisers and a maximum of three times per week.
- 3.13 Contact has been made with the Institute of Fundraising to request whether the Institute would agree a complete ban on street fundraising on George Street. This has happened in North Laine in Brighton, where there were particular concerns raised. Another option which will be explored is the possibility of a restriction on street fundraisers being able to move around George Street. Details of how a restriction to a fixed spot could be made would need further exploring. If a fundraiser has a stall or a marquee, this would require a licence from the Council. If the fundraiser did not wish to have a stall that required a licence, it would need to be worked out how to designate where the fundraiser is to stand.
- 3.14 A meeting with the Institute will be scheduled in the next few weeks where a site visit to George Street will take place and further discussions will take place regarding the options for either a new Site Management Agreement covering only George Street or amending the current Site Management Agreement. Officers will provide a verbal update to Committee in relation to the meeting.
- 3.15 Relying on an existing bye law
- 3.16 Bye laws are local laws that are made by local authorities. In Brighton and Hove, there is already in existence a bye law against 'touting'. The bye law states:
- No person shall in any street or public place for the purpose of selling or advertising any article or obtaining custom tout or importune to the annoyance or obstruction of passengers.
- 3.18 Although this may appear to be a good option for street fundraising, the lack of precision may open the Council to challenge. Street fundraising is on the edge, if not outside, the wording of 'for the purpose of selling, advertising any article or obtaining custom'.
- 3.19 Pertinently, the Ministry for Housing, Communities and Local Government issue model bye laws which can be used when making a new bye law. The Model Bye laws and guidance have very recently been updated. The current wording for the 'touting' model bye law is very similar to the Brighton and Hove wording and the guidance states that "The Department for Digital, Culture, Media and Sport advice is this byelaw does not cover collections for a charitable, philanthropic or benevolent purpose".
- 3.20 Bye laws are enforced by the local authority in the Magistrates Court and if convicted, can lead to a fine. The risk with enforcing a law that does not cover the offence is that the prosecution will not be successful. The best first avenue is therefore to explore all options for dealing with the matter through a site management agreement with the Institute of Fundraising.

3.21 Making a new bye law

3.22 In view of the uncertainty around the enforceability of the existing bye law in relation to 'chugging' there is the option of seeking to make a new bye law which does explicitly cover 'chugging'.

3.23 The process for making a new bye law includes preparing a draft of the bye law, carrying out an assessment of whether the regulatory burden of the bye law is proportionate and publishing a statement regarding the regulatory burden and why an increase has been considered proportionate and necessary. The assessment by the local authority needs to have involved consultation with the persons likely to be affected by the byelaw.

3.24 Importantly, the proposed byelaw requires the approval of the Secretary of State. Byelaws are considered measures of last resort after a local authority has tried to address the local issue through other means. Therefore, if the Council were to seek to make a new bye law, it will be very important to be able to show that all the possible attempts to deal with the issue through a Site Management Agreement had not been successful. A local authority that is not able to establish this is not likely to be given approval for the bye law.

3.25 Making a Public Space Protection Order

3.26 The Council has the power to make a public space protection order (PSPO) which could apply to George Street. However, the following criteria will need to be met. The Council would need to be able to show that:

- i) The activities carried on in the public space have or are likely to have a *detrimental effect on the quality of life of those in the locality* and
- ii) The effect of the activities are or are likely to be of a *persistent or continuing nature such as to make them unreasonable* and justifying any restrictions or requirements imposed by the PSPO.

3.27 It would be important to consider proportionality when assessing whether to make a PSPO. Part of this would be considering whether the aim could be achieved by a different method and whether all attempts had been made to resolve the issue through a Site Management Agreement.

3.28 Before making a PSPO, the Council would also need to consult various groups, including the police, community representatives and owners and occupiers of land within the restricted area.

3.29 Breach of a PSPO is an offence and may lead to a conviction with a fine. Alternatively, a fixed penalty can be given by a police officer or a person authorised by the Council.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 In light of the information that has come forward from representatives of businesses, charities and residents on George Street, Hove, there are a number of options that can be pursued to seek to curtail street fundraising. Each option is set out in the report.
- 4.2 It is recommended that the option of a new Site Management Agreement should be explored to its fullest before any of the other three avenues are explored. Although the current Site Management Agreement does not deal with the issue, there is potential for a revised or entirely new agreement. If, despite efforts this is not attainable, the other three options could be explored further. The attempts to resolve the matter through a new Site Management Agreement will be important evidence which will be needed to support pursuing any of the other options.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Two meetings with representatives from businesses, charities, residents and Councillor Wealls who raised the issue at Committee have already taken place and their views and representations are set out in the body of the report and in Appendix 2. A further meeting is scheduled to take place with these representatives and the Institute of Fundraising to discuss the options further.

6. CONCLUSION

- 6.1 This Committee was presented with a letter at its meeting on 8 October 2018 asking for a report on the options for curtailing street fundraising on George Street.
- 6.2 If the Council are to curtail street fundraising, there are four options for doing this; a Site Management Agreement, relying on an existing touting bye law, making a new bye law or making a public space protection order.
- 6.3 It is recommended that the first option should be thoroughly explored before the other options are progressed. If a new or amended Site Management Agreement is not successful, the other options of making a new bye law or making a public space protection order would be the next steps. It is not recommended that the Council rely on our existing 'touting' bye law for the reasons set out in paragraphs 3.16- 3.20.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 Any costs incurred in entering into a new or amended Site Management Agreement will have to be met from within existing revenue budgets.

Finance Officer Consulted: Michael Bentley

Date: 30/10/18

Legal Implications:

7.2 The legal implications are set out in the body of this report.

Lawyer Consulted: Sarita Arthur-Crow Date: 29 October 2018

Equalities Implications:

7.3 The proposals set out in the report are intended to ensure that those from vulnerable groups are protected from unsolicited approaches which may cause them distress or concern. Any agreed way forward would be designed to be proportionate in terms of impact on those seeking to raise funding and those who are affected by it.

Sustainability Implications:

7.4 None

Any Other Significant Implications:

7.5 None

SUPPORTING DOCUMENTATION

Appendices:

1. Letter submitted to the Committee seeking a report on the curtailing of street fundraising on George Street
2. Summary document of the concerns raised by representatives from businesses, charities and residents on George Street
3. The Brighton and Hove Site Management Agreement