

Thursday, 12 October 2023

Report of the Assistant Director - Growth & Regeneration

Draft Charitable Collections Policy 2024 - 2028

Exempt Information

None

Purpose

To review the draft Charitable Collections Policy set out at Appendix 1 and, subject to any recommended amendments, approve the draft policy for adoption by Full Council

Recommendations

It is recommended that Licensing Committee recommend to Full Council that they consider the draft Charitable Collection Policy 2024 – 2028 as suitable for adoption.

Executive Summary

The Council, in its capacity as Licensing Authority, is required to consider applications and issue permits and licences for charitable collections which take place in public areas and from house to house. There is currently no policy in force covering the Council area for these activities and it is considered necessary and appropriate for such a policy to be prepared, consulted upon and published in order to ensure that applications for this type of authorisation are considered and determined in a fair, consistent and transparent manner.

The draft policy sets out the legal requirements and application process, along with the Licensing Authority's approach to preventing nuisance to residents and businesses located within the Council area and the enforcement of unlicensed activities.

At the meeting of the Licensing Committee held on 22nd June 2023, the committee recommended that the draft charitable collection Policy 2024 – 2028 be approved for consultation subject to the following amendments:-

Page 4 – 3.5 No more than 3 collections per charity per Calendar year will be allowed in the Tamworth Borough. Applications that consist of consecutive days will be considered as 1 collection.

3.9 – Tamworth Borough Council will restrict the number of people taking part in a collection to three. If more than three people are requested these will be considered on a case by case basis.

Page 8 – Deleted How much the charity will receive as part of the collection.
Reworded The percentage of the proceeds that the charity will receive from the collection.

and that the draft policy be brought back to the Licensing Committee for consideration together with any comments received

The public consultation exercise was held between the 3rd July 2023 and 24th September 2023. A list of those that were consulted is attached at Appendix 3. No responses to the consultation were received. No amendments have been made to the draft policy following the consultation exercise.

Options Considered

Applications for charitable collections are currently being considered and determined according to historical practices of the Borough Council. This has resulted in inconsistency and possibly perceived unfairness across the council area and a lack of effectiveness or efficiency for those processing the applications.

Although there is no statutory requirement for a policy covering charitable collections, it is considered desirable and necessary to implement one so that the Licensing Authority is seen to be transparent, consistent, fair and open when considering and determining applications for this activity.

Resource Implications

There are no additional resource implications arising from this Consultation; resources required to fulfil the Council's duties in respect of the Licensing process are met from existing budget.

Legal/Risk Implications Background

There is no provision within the legislation for fees to be charged for either processing applications or granting permits or licences for charitable collections.

As a result the cost to the service of processing applications and any necessary enforcement action will need to be borne from the general fund.

As stated above, there is no statutory requirement for Licensing Authorities to produce charitable collection policies although it is considered that the Council would be far less likely to be open to legal challenge where a policy is adopted which clearly sets out how applications will be considered and any reasons for refusal.

Equalities Implications

This report has been prepared in accordance with the Council's Diversity and Equality Policies.

Environment and Sustainability Implications (including climate change)

The Council is committed to tackling climate change and the proposed Policy will assist in ensuring that it contributes appropriately to this ambition.

Background Information

The Licensing Authority is required to consider and determine applications for charitable collections in line with the relevant legislation, as specified below:

- The House to House Collections Act 1939
- The House to House Regulations 1947
- The Police, Factories, etc (Miscellaneous Provisions) Act 1916 and as amended by the Local Government Act 1972
- Model Regulations set out in the Charitable Collections (Transitional Provisions) Order 1974

It is recognised that fundraising collections play a vital role in the work carried out by charities and are therefore an important means of both raising money for good causes and also promoting the goals and messages of the collecting charity.

It is equally important, however, to ensure that any charitable fundraising is carried out by bona fide charitable organisations and collectors, that a fair percentage of collection proceeds are donated directly to charitable causes and that no nuisance is caused to businesses and residents as a result of collections.

Applications for both street and house to house collections are regularly received by the Council, no policy is currently in place for this type of licensable activity.

It is therefore considered necessary to implement a new policy which sets out the Licensing Authority's approach to considering and determining applications and also in relation to any necessary enforcement action across the whole Council area.

The policy set out at Appendix 1 has been drafted for this purpose and it aims to:

- safeguard the interests of both donors and beneficiaries;
- facilitate collections by bona fide charitable institutions and to ensure that good standards are met;
- prevent unlicensed collections from taking place; and
- prevent nuisance and harassment to residents, businesses and visitors to the Council area.

House to House Collections

House to House collections are regulated by the House to House Collections Act 1939 ("the 1939 Act"), together with the House to House Collection Regulations 1947 ("the 1947 Regulations"). The 1939 Act prohibits the making of house to house collections for charitable purposes except under the terms of a licence issued by the relevant Licensing Authority.

The 1939 Act also gives the Secretary of State the power to grant exemptions for house to house collections in respect of certain charities in England and Wales. An exemption has the same effect as a licence which has been granted for the areas to which it relates.

A house to house collection is defined within the 1939 Act as "an appeal to the public, made by means of visits from house to house, to give, whether for consideration or not, money or other property". Collections are not restricted to domestic properties and can include a place of business.

Although specifically excluded from the ambit of street collections, it is unclear whether proceeds, that is "money or other property" under section 11 of the 1939 Act includes the collection of direct debit information. This type of collection would not have been in existence at the time the legislation came into force. There is no case law on this issue or guidance from fundraising authorities and regulators. There is also inconsistency across other local authority policies in relation to whether licences are required for this type of collection.

It is considered that the purpose of regulating charitable collections is to protect residents and particularly the vulnerable, from being exploited and from possible fraudulent requests for donations. As a result, it is the view of officers that direct debit mandate information should be included within the requirement for a licence and the draft policy reflects this requirement.

A charitable purpose is defined as "any charitable, benevolent or philanthropic purpose, whether or not the purpose is charitable within the meaning of any rule of law". The collection must therefore be one that is made wholly or partly for charitable purposes whether it is for the collection of money, or any other items that may subsequently be sold for money, where either the money or the items are given for charitable purposes.

Collections can be made by individuals cold calling and requesting money or other items at the time of their visit or by leaving bags and / or making requests for donations to be collected at a later specified date. Collections which are made for purely commercial profit are not required to be licensed.

The draft policy sets out the application process, expected application submission timescales and reasons for possible refusal. The policy also specifies restrictions on collection periods

and hours plus a prohibition on collections where any notice is displayed preventing cold calling.

There is a statutory right of appeal against the refusal of a licence which lies with the Secretary of State.

In order to prevent nuisance to the public it is intended that only one licence will be issued to any area for any specified period, although this may be in addition to any exemption orders being issued for collections which may be taking place within the Council area.

Regulations which reflect the House to House Collection Regulations 1947 are set out at Appendix B of the draft policy. Licence holders and collectors will be expected to comply with these requirements to ensure that any collection is carried out in a lawful manner by properly authorised persons and that all proceeds are properly accounted for. It is intended that straightforward guidance notes will be issued to licence holders in addition to the Regulations.

Street Collections

The Council is empowered under Section 5 of the Police, Factories, Etc (Miscellaneous Provisions) Act 1916 (the Act), as amended by the Local Government Act 1972, to authorise and issue permits for collections made in 'any street or public place' for 'charitable or other purposes'.

Section 5 of the Police, Factories, Etc (Miscellaneous Provisions) Act 1916 allows local authorities to adopt provisions concerning the regulation of street collections in their area. A set of Regulations are set out at Appendix A in the policy. These are the "model" street collection Regulations set out in the Charitable Collections (Transitional Provisions) Order 1974 which do not require the approval of the Secretary of State but merely the adoption by resolution. All permit holders and collectors are expected to comply with the requirements of these Regulations which aim to ensure that any collection is carried out lawfully and without causing nuisance to residents and businesses.

There is no legal requirement for the Council to adopt a policy on how it proposes to process applications for charitable street collections and issue permits although it is considered best practice for the Council to adopt such a policy to encourage consistency and transparency in the way applications for street collection permits are considered and granted.

There is currently no policy covering street collections in the Tamworth Borough. As a result, applications are currently being determined according to historical practices which is resulting in inefficiency for those processing the applications and inconsistency and a possible perception of unfairness for applicants.

It is therefore considered necessary and appropriate to produce a single policy which sets out the Licensing Authority's approach to considering and determining street collection applications along with how such activities will be regulated and enforced.

Permits for this type of collection are generally only issued for one day on specified days of the week. The draft policy also specifies collection hours and locations, aiming to retain collections within town centre areas.

To ensure fairness and equal opportunities, charities are also restricted in relation to the number of permits which can be applied for annually.

To prevent nuisance to visitors and businesses collections are also generally restricted to one per area per day.

Site Management Agreements

As referred to at point 2.10 above, the collection of direct debit information is excluded from the ambit of street collections, although the Chartered Institute of Fundraising (CioF), previously known as the Public Fundraising Regulatory Authority (PFRA), control the collection of this information (collectors are commonly known as "chuggers") through Site Management Agreements which are agreed with the local authority. These agreements specify issues such as collection days, times, locations and any other relevant requirements.

General

The legislation concerning the refusal of applications for house to house and street collections is very specific and only allows certain matters to be taken into account. The draft policy aims to give both applicants and officers clear and robust guidance when determining applications for charitable collections.

There is no fee payable for the processing of applications for charitable collections or for the grant and issue of licences or permits.

To prevent fraud and ensure clarity for residents and businesses, details of all issued licences and permits will be made available on the Council's website.

Report Author

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List of Background Papers

House to House Collections Act 1939

<https://www.legislation.gov.uk/ukpga/Geo6/2-3/44>

House to House Regulations 1947

<https://www.legislation.gov.uk/uksro/1947/2662/contents/made>

Police, Factories, etc (Miscellaneous Provisions) Act 1916

<https://www.legislation.gov.uk/ukpga/Geo5/6-7/31>

Charitable Collections (Transitional Provisions) Order 1974

https://www.legislation.gov.uk/uksi/1974/140/pdfs/uksi_19740140_en.pdf

Fundraising Regulator's Code of Practice

<https://www.fundraisingregulator.org.uk/code>

Appendices

Appendix 1 – Draft Charitable Collections Policy 2024-2028

Appendix 2 – Impact Assessment Form

Appendix 3 – list of consultees

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