

Item 7 Hackney Carriage Licensing – Future Policy

Report of the Head of Administration (Portfolio: Corporate)

Recommended:

- 1. With effect from 1 January 2011 the current policy of restricting the number of hackney carriage proprietor licences issued by the Council is removed.**
- 2. With effect from the above date the Head of Administration grant a licence but only for vehicles which meet the conditions set out in Annex 2 attached to this report.**
- 3. The requirements contained in recommendation 2 above do not apply to the existing 35 hackney carriage proprietor licences.**

SUMMARY:

- The Borough Council continues to be in a minority of authorities that restricts the number of hackney carriage licences it issues. This policy needs to be reviewed.
- Following consideration of this matter at the meeting of this Committee held on 15 July 2009, a consultation exercise was undertaken. The results of this were largely inconclusive.
- The current policy can no longer be maintained without justification and so a decision must be made as to future policy. Officers recommend de-restriction of licence numbers subject to certain quality control measures being introduced.

1 Introduction

- 1.1 The Council currently restricts the number of hackney carriages (taxis) it licences to 35. Such a restriction can only be imposed if the Council believes that there is no significant unmet demand for hackney carriages within the Borough. The current policy is based upon the results of an independent survey undertaken in 2005 and reported to this Committee in 2006. That survey indicated that unmet demand did exist but rather than remove all restrictions, licence numbers should be increased and then reviewed after a period of time. This process is known as ‘managed growth’.

- 1.2 The survey recommended the issuing of three additional licences in 2005-6 subject to the provision of additional rank spaces in Andover town centre. It then recommended the issuing of four further licences, but only for disability access vehicles, during 2006-8 and then for a further survey to be undertaken in 2008-9 to assess the impact of the issue of further licences. It has not been possible to comply with this timetable as the additional rank provision only came on stream in 2009 with the opening of a new evenings only rank in London Street/Winchester Street. At that time a further three licences should have been made available but following an objection from Test Valley Taxi Association the Council decided not to issue those licences.

2 Background

- 2.1 In 2004 the Department for Transport (DfT) wrote to all Councils in England and Wales which still restricted licences asking that restrictions be reviewed and the results reported back to the DfT. The clear implication from the DfT was that if Councils wished to retain a restriction then they could only do so if it was in the public interest not to de-restrict licence numbers. The government's policy on the subject remains the same namely that:
- In the Government Action Plan for Taxis (and Private Hire Vehicles) restrictions should only be retained where there is shown to be a clear benefit for the consumer.
 - Councils should publicly justify their reasons for the retention of restrictions and how decisions on numbers have been reached.
 - Unless a specific case can be made, it is not in the interests of consumers for market entry [to the taxi trade] to be refused to those who meet the application criteria.
- 2.2 The government recommends that a regular, ideally triennial, survey of unmet demand be undertaken. Officers had originally put forward a bid for sufficient budgetary provision for a survey to be undertaken in 2009-10. Due to the Council's financial situation, this bid was rejected and officers were asked to consider other means of reviewing the current policy. In theory the cost of undertaking any survey could be passed onto proprietors which is a practice undertaken by some local authorities. It is the view of officers that this is not a viable option in Test Valley as with only 35 proprietors the cost of undertaking any survey would see each having to pay an additional £285 on top of their existing licence fee of £92. In addition to there being an expectation to hold regular surveys, the Council must also be in a position to defend its current policy (and reject any application for a licence) and it will become increasingly difficult to do this without the results of a recent survey to justify its position.
- 2.3 In 2006 it was the view of both officers and the Test Valley Taxi Association that de-restriction of licences was not in the public's interest. However, as reported in 2009, officers have become increasingly concerned that the

current policy is preventing access into the trade and thus restricting provision to the public. This Committee may recall that in 2008 it considered the matter of a hackney carriage waiting list. This indicated that there are a number of persons wishing to operate a taxi within the Borough but they are unable to do so as a result of the current policy. Accordingly, in an effort to gauge opinion on the subject with a view to informing any future policy, members recommended that a consultation exercise be undertaken. The results of this are reported in paragraph 4 below.

3 Corporate Objectives and Priorities

- 3.1 Aside from the Council's statutory responsibilities, the licensing of hackney carriages relates to the SCHEME priority of 'creating stronger and safer communities'. Licensing of hackney carriages reduces the potential for illegal plying for hire by unlicensed vehicles and also licensed private hire vehicles. It provides transport for the public who may not have any safe alternative means of transport available. The service provided by the hackney carriage trade plays a key role in the provision of an integrated public transport system. Decisions taken by the Council should be approached in the interests of the travelling public.

4 Consultations/Communications

- 4.1 Following the recommendation agreed at the 15 July 2009 meeting of this Committee, officers conducted a consultation exercise by sending a questionnaire to hackney carriage proprietors, private hire vehicle operators, transport providers, groups representing disabled persons, members, parish and town councils and the Police. In addition the Licensing Manager attended meetings of the Test Valley Passenger Transport Forum and the Local Strategic Partnership Transport Action Group.
- 4.2 Approximately 380 questionnaires were sent out but only 45 returned. The detailed results are shown in Annex 1 to this report. Of those that responded, a majority felt that there were currently a sufficient number of hackney carriages within the Borough and also a sufficient number of those vehicles were wheelchair accessible. However, analysis of the responses reveals that at least half of these come from existing hackney carriage proprietors. In many cases, these persons will be protective of their position and would not wish to see an increase in licence numbers. Exactly the same comment can be made in respect of question 4 which sought views on what the Council's future policy should be.
- 4.3 The overall poor level of response does not help in forming a view as to what the Council's future policy should be. It is unlikely that a repeat of the consultation exercise would produce a better response rate. As has been mentioned above, funding is unavailable for a full unmet demand survey. Accordingly the Council must consider a future course of action and the options are set out below.

- 4.4 As at 18 December 2009, 254 (or 74%) of the 343 licensing authorities in England and Wales had no numerical restriction on the number of hackney carriage licences issued. Within Hampshire the position is as follows:

Council	Hackney carriages	Numbers restricted?	Ratio of hackney carriages to population**
Basingstoke & Deane	55	Yes	1:2774
East Hampshire	117	No	1:933
Eastleigh	109	No	1:1065
Fareham	219	No	1:493
Gosport	79	No	1:967
Hart	150	No	1:556
Havant	40	Yes	1:2921
New Forest	108	No	1:1567
Portsmouth	234	Yes	1:797
Rushmoor	144	No	1:631
Southampton	263	Yes*	1:826
Test Valley	35	Yes	1:3137
Winchester	139	No	1:771

*Following the results of an unmet demand survey Southampton City Council decided to increase numbers of licences by 4 in December 2009, another 8 in December 2010 and a further 8 in December 2011. ** 2001 Small Area Census Statistics

It can be seen therefore that Test Valley residents are not well served by the number of hackney carriages available to them in comparison with the residents of neighbouring authorities. Whilst there is no guide figure as to the ideal number of hackney carriages per head of population, Kielder Newport West Limited who undertook the unmet demand survey for the Council in 2005 suggested that an average ratio was one hackney carriage for every thousand persons.

5 Options

- 5.1 The Council has a number of options in relation to the review of the current policy.
- (a) In theory it could maintain the existing policy of restricting licence numbers and agree not to release any further licences at this time.
 - (b) It could retain the current position and follow the recommendations of the independent survey albeit that the Council is now effectively three to four years behind with this process.
 - (c) It could issue a number of licences either immediately or over a periodic basis to satisfy any unmet demand (managed growth).

- (d) Alternatively it could remove numerical restrictions on hackney carriage licences completely and opt for total delimitation meaning that there are no restrictions as to how licences are granted.
- (e) Finally, it could opt for total delimitation subject to a policy which supports quality control mechanisms.

6 Option Appraisal

- 6.1 By adopting option (a), the Committee are restricting the number of licences available and as such, an unmet demand survey would need to be undertaken to defend our position should a licence application be received. As has been mentioned, funding to undertake a survey is unavailable and so this option is not considered viable. By retaining its current policy or adopting a new policy of 'managed growth' (options (b) and (c)) the Council would be following the recommendations of the independent survey albeit that the survey was conducted over four years ago and thus it is questionable if the survey results are still reliable and relevant. If this option was pursued, it would still be necessary to undertake a further survey. In deciding to issue a set number of licences either immediately or over a periodic basis, it would be necessary to know the current extent of any unmet demand and this could only be ascertained by undertaking a survey. As has already been mentioned, there is no budgetary provision for a survey (which is likely to cost in the region of £10,000 - £15,000). Accordingly this option is not deemed viable by officers.
- 6.2 Options (d) and (e) involve removing any current numerical restriction upon the number of licences. There is the potential for dissatisfaction within the existing taxi trade due to extra competition if additional licences are issued, particularly if option (d) is pursued. Also, there is the likelihood with this option that that de-restriction may result in a sudden increase in the numbers of hackney carriages (possibly by 100% or more). Such an increase would be difficult to administer within existing resources and might make enforcement problematic with the result that there may be a reduction in the current high standards of vehicles and drivers. Members are reminded that public safety is the primary licensing test not that of employment or business related issues.
- 6.3 Such problems could be overcome if option (e) were pursued whereby de-restriction is accompanied by additional requirements e.g. only licensing wheelchair accessible vehicles, or vehicles of a certain age or type. The consultation process undertaken last year sought views on this and whilst the majority of respondents asked that the current policy of restricting numbers be maintained, the same comments as have been made in paragraph 4.2 above apply to this question. It can also be seen from the answers to this question and also the comments submitted that there is support for the provision of more wheelchair accessible vehicles. Officers believe that this option is the most preferred in that it will provide an opportunity to those wanting to enter the trade without potentially flooding the trade with new vehicles (thus allaying the fears of existing proprietors). Importantly it has the potential to increase provision for wheelchair users requiring a wheelchair accessible taxi.

- 6.4 As mentioned above, it is recommended that additional licences be granted with certain conditions. A set of proposed conditions is set out in Annex 2 attached to this report. The main requirements of these conditions is that vehicles will only be licensed if they are wheelchair accessible, have European Whole Vehicle Type Approval and are no more than 12 months old since the date of first registration. Examples of such vehicles include the LTI TX4 (London style cab), Mercedes Vito, Patons TW200 and Peugeot E7.
- 6.5 It is important to state that these conditions will not apply to the existing 35 hackney carriage licences already issued and these vehicles will continue to be replaced on a "like for like" basis. The commercial premium associated with hackney carriage proprietor licences is something that the Borough Council has no control over. This "like for like" approach may help to preserve some of the value of the licence plate thus appealing to the existing proprietors. Adoption of this approach will hopefully result in the creation of a mixed fleet of licensed vehicles including saloon cars, multi-purpose vehicles and purpose built wheelchair accessible vehicles thus giving the public a choice of vehicle.
- 6.6 A survey conducted by the National Private Hire Association in May 2010 found that local authorities fall into one of three groups: those that still restrict hackney carriage numbers but require wheelchair accessible vehicles; those that still restrict and have mixed fleet conditions; and finally those that have derestricted numbers but allowed existing licence holders to maintain their previous conditions and, for example, replace a saloon car with the same type of vehicle. The survey indicated that those authorities in the latter group had been the most successful in achieving a good mixture of different vehicle types and officers believe that this is the right approach for Test Valley.
- 6.7 Test Valley Taxi Association has been consulted on the proposed policy of de-restriction and their response is detailed in Annex 3 attached to this report. Their response mentions the current Department for Transport Best Practice Guidance on this matter, the relevant extracts of which are reproduced in Annex 4 attached to this report. Whilst the Association is right to state that de-restriction is merely suggested as best practice, it is the view of officers that this is the approach favoured by the Department for Transport and that the comments contained within paragraph 47 of their guidance supports this view. Officers are also of the opinion that the comments contained within paragraph 48 of the guidance are pertinent to Test Valley.
- 6.8 A recent development that has further influenced the decision to recommend option (e) is the introduction of the Equalities Act 2010. A date for implementation has yet to be issued although the DfT have said it will not be before April 2011. Section 161 of this Act will amend section 16 of the Transport Act 1985 which is the legislation that allows the Council to restrict the number of hackney carriage licences. It will mean that an application for a licence must be granted if the applicant has a wheelchair accessible vehicle and the proportion of the current licensed hackney carriage fleet within the Borough that comprises wheelchair accessible vehicles is less than the level determined by the Secretary of State.

- 6.9 At the present time no levels have been set, however, as an example the level may be set at 50%. In Test Valley 11 of the current fleet of 35 vehicles are wheelchair accessible and thus the Council would have to issue further licences for wheelchair accessible vehicles so that 50% of the fleet comprised such vehicles. By adopting option (e) now, the Council will not be forced into complying with the requirements of central government and will be able to exercise some control over the grant of additional licences e.g. by setting its own licence conditions.

7 Resource Implications

- 7.1 Adopting either option (a), (b) or (c) would still require an unmet demand survey to be undertaken as mentioned above there is no funding available for such. Adopting option (d) as mentioned may produce a sudden increase in the numbers of licensed vehicles and place a sudden demand upon existing resource levels which potentially could not be met. By adopting option (e), any increase in the number of vehicles is likely to be minimal and as such will have little if any impact upon existing resource levels.

8 Legal Implications

- 8.1 As has been stated previously, the Council can only maintain its current policy of restricting licence numbers on the basis of an up to date unmet demand survey. The last survey did indicate unmet demand although, increasingly, the survey results cannot be relied upon as justification for our current policy as they become more and more out of date. Members should be aware that the Council could at any time receive an application for a hackney carriage licence which would be refused based upon current policy. Should a disappointed applicant seek to mount a legal challenge to such a refusal, then it will become more difficult, as time goes by, for the Council to defend its current position.
- 8.2 The proposed policy recommended in this report, namely that of delimitation linked to a policy of quality control has been challenged, but upheld in the cases of R v The City of Newcastle ex parte Blake and also R v The City and County of Swansea ex parte Jones. Therefore the approach recommended in this report is considered to be lawful.

9 Equality Issues

- 9.1 Adoption of the recommendations constitutes a change in Council policy. Consequently an Equalities Impact Assessment screening has been undertaken. This has shown that there is no intentional or unintentional discrimination as a result of adopting this revised policy. The screening indicates that adoption of the new policy would produce a benefit in that potentially it increases the provision of wheelchair accessible vehicles in the Borough thus benefiting wheelchair users.

10 Other Issues

- 10.1 Community Safety – none apart from that mentioned in 3.1 above.

- 10.2 Environmental Health/Sustainability Issues – the provision of hackney carriages may lead to slightly less reliance upon private motor vehicles, although the effects are more difficult to quantify.
- 10.3 Property Issues – none.
- 10.4 Wards/Communities Affected – none directly but indirectly the whole Borough particularly Andover town and the surrounding environs.

11 Conclusion

11.1 The Council’s current policy of restricting hackney carriage licences is becoming increasingly untenable. It is difficult to justify the current policy without the results of a recent survey and this is not possible because of the authority’s financial position. The Council must now consider whether continued restriction of licence numbers is viable. The consultation exercise undertaken last year has proved inconclusive in providing information which would help formulate future policy. Whilst de-restriction is perfectly reasonable and lawful, it is not without its problems. However, de-restriction combined with a policy of quality control is felt to be the best way forward.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
European Conference of Ministers of Transport – Improving Access to Taxis 2007			
Department for Transport Consultation on Improving Access to Taxis February 2009			
Reports to Licensing Committee 17 October 2006 and 15 July 2009			
Letter from Department for Transport dated 16 June 2004			
Department for Transport Best Practice Guidance for local authorities: Taxi and Private Hire Vehicle Licensing October 2006			
Hackney Carriage Unmet Demand and De-restriction Survey report dated 20 June 2005			
Results of consultation exercise undertaken 2009			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
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