

## Notice of Meeting

# Licensing Committee

**Date:** Thursday, 03 November 2016

**Time:** 17:30

**Venue:** Conference Room 1, (Beech Hurst), Beech Hurst, Weyhill Road,  
Andover, Hampshire, SP10 3AJ

**For further information or enquiries please contact:**

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**Legal and Democratic Service**

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The recommendations contained in the Agenda are made by the Officers and these recommendations may or may not be accepted by the Committee.

**PUBLIC PARTICIPATION SCHEME**

*If members of the public wish to address the meeting they should notify the Legal and Democratic Service at the Council's Beech Hurst office by noon on the working day before the meeting.*

## Membership of Licensing Committee

<b>MEMBER</b>		<b>WARD</b>
Councillor J Budzynski	Chairman	Winton
Councillor A Johnston	Vice Chairman	Romsey Extra
Councillor N Anderdon		Chilworth, Nursling and Rownhams
Councillor A Beesley		Valley Park
Councillor A Brook		Alamein
Councillor Z Brooks		Millway
Councillor J Cockaday		St Mary's
Councillor D Denny		St Mary's
Councillor D Drew		Harewood
Councillor P Hurst		Tadburn
Councillor P Lashbrook		Penton Bellinger
Councillor P Mutton		Penton Bellinger
Councillor J Ray		Cupernham
Councillor I Richards		Abbey
Councillor A Tupper		North Baddesley

# Licensing Committee

Thursday, 03 November 2016

## AGENDA

The order of these items may change as a result of members of the public wishing to speak

- 1 Apologies
- 2 Public Participation
- 3 Declarations of Interest
- 4 Urgent Items
- 5 Minutes of the meeting held on 8 September 2016
- 6 Licensed Hackney Carriages and Private Hire Vehicles - Seating Capacity Policy 4 - 12  

A report recommending a review of the existing vehicle seating capacity policy.
- 7 Exclusion of the Public 13 - 13  

The following is a confidential report from which members of the public are excluded.
- 8 Refusal of Dual Driver's Licence Application
  - Information relating to any individual;
  - Information which is likely to reveal the identify of an individual;
  - Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime

## **ITEM 6 Licensed Hackney Carriages and Private Hire Vehicles - Seating Capacity Policy**

Report of the Head of Legal and Democratic (Portfolio: Corporate)

### **Recommended:**

**That the current policy for licensing of hackney carriages and private hire vehicles, in respect of seating capacity, is retained.**

#### **SUMMARY:**

- The Council has long since adopted a policy for vehicles licensed as hackney carriages and private hire vehicles of restricting the use of seats in certain types of vehicle which in the view of the Council do not afford passengers with sufficient space and comfort
- That policy has been challenged by a Private Hire Vehicle Operator and was considered by this Committee as its October meeting where a further report on the matter was requested.

### **1 Introduction**

1.1 The Borough Council has a statutory role in licensing hackney carriages (taxis) and private hire vehicles (minicabs). There are currently 43 of the former and approximately 200 of the latter licensed by the Council. There is no approved national standard for licensed vehicles. The only requirements in respect of private hire vehicles are that the vehicle is: suitable in type, size and design; in a suitable mechanical condition; and safe and comfortable. There is no similar legislative provision for hackney carriages although Test Valley, like most other local licensing authorities, applies the same vehicle standards to both hackney carriages and private hire vehicles.

### **2 Background**

2.1 At the meeting of this Committee held on 8 September members considered a report advising that a local Private Hire Vehicle Operator had sought to license a Kia Carens as a six seater vehicle. This action effectively represented a challenge to the current policy of excluding the rear row of seats in vehicles where in the view of the Vehicle Inspector they do not afford sufficient space and comfort to any passengers sat in those seats. A copy of this report is attached as Annex 1 to this report.

- 2.2 Despite officers recommending that the current policy be retained, the Committee expressed, by a clear majority, a wish to remove the policy. The actual resolution was as follows: *That the current policy for licensing of hackney carriages and private hire vehicles in respect of seating capacity be retained, but that the Licensing Manager be requested to investigate, and to report back as soon as possible upon the possibility of introducing a trial period for this type of vehicle to allow them to operate up to a six passenger capacity.* Members also expressed a wish to ensure that the travelling public were able to comment upon any issues associated with such a change and that any feedback was collected and reported back to the Committee at a future date when a decision could be made whether to permanently remove the policy.

### **3 Corporate Objectives and Priorities**

- 3.1 The licensing of hackney carriages and private hire vehicles is a statutory function which does not directly relate to the Council's corporate aims. Licensing of hackney carriages and private hire vehicles provides transport for the public who may not have any safe alternative means of transport available to them. The service provided by taxis plays a key role in the provision of an integrated public transport system.

### **4 Consultations/Communications**

- 4.1 Original communications on this matter between the operator and officers were reported at the September meeting. There is no change to the position that local authorities adopt a mixed approach to this subject with some authorities licensing the Kia Carens (and other similar vehicles) for its full seating capacity of six persons whilst numerous other authorities will exclude stow-away type seats and only license vehicles to carry four persons.
- 4.2 Since the September meeting officers have raised the issue with James Button, the UK's leading taxi licensing lawyer who has in the past provided training to this Committee. His view is that the Council is justified in retaining a policy of excluding rear seats but from the point of view of safety rather than comfort. Mr Button takes the view that in any scenario where a seat has to be moved to gain access to the rear seats then this is inherently unsafe and provides sufficient justification to exclude such seats for licensing purposes. He comments that whilst a vehicle may be considered safe for use a private motor vehicle, once licensed the vehicle should be viewed as a commercial passenger carrying vehicle and its use considered in that way. This could potentially allow the Council to adopt a more stringent approach to use of the vehicle. There is a concern that the Council could be liable in the event of an accident involving a licensed vehicle where passengers in the rear row of seats were unable to exit the vehicle safely.

## **5 Options and Option Appraisal**

- 5.1 There is no legal requirement to impose seating capacity limits or related standards regarding licensed vehicles. However, the introduction of a seating policy was considered appropriate to ensure that maximum passenger comfort was achieved. Officers are still of the opinion that retention of a limit can be justified on grounds of passenger comfort and – in light of the comments in paragraph 4.2 above – also that of passenger safety.
- 5.2 Alternatively the Committee may want to see the policy removed. Officers have considered how this can be best achieved and whilst the Committee had suggested a trial period for the removal of the policy this approach would in the view of officers leave some uncertainty for vehicle operators. Therefore if the Committee decides not to accept the recommendation and instead resolves to remove the policy, it is recommended that the policy is removed in its entirety and the impact of that decision reviewed after a suitable period of time has passed to allow for any feedback although it is unlikely that any would be received.

## **6 Resource Implications**

- 6.1 There are no direct resource implications for the Council as a result of this report. It is unlikely that the removal of the policy will lead to any noticeable reduction or increase in the number of licensed vehicles.

## **7 Legal Implications**

- 7.1 Sections 47 and 48 of the Local Government (Miscellaneous Provisions) Act 1976 allow the Borough Council to attach such conditions to hackney carriage and private hire vehicle licences as it “may consider reasonably necessary”. This is the legal provision under which the Council is able to restrict the use of stow-away seats such as those found in the rear row of seats in the Kia Carens. The same legislation allows a licence holder who is aggrieved by a licence condition to appeal that to the Magistrates Court. Retention of the policy may potentially result in a challenge whereas removal of the policy is unlikely to be challenged by any licence holder as it will potentially be to their benefit.

## **8 Equality Issues**

- 8.1 An Equalities Impact Assessment (EQIA) has not been undertaken as the proposed recommendation does not represent a significant policy change.

## **9 Other Issues**

- 9.1 Community Safety – none directly although the proper licensing of hackney carriages and private hire vehicles reduces the opportunity of illegal plying for hire by unlicensed vehicles.
- 9.2 Environmental Health Issues – none.

- 9.3 Sustainability and Addressing a Changing Climate – none.
- 9.4 Property Issues – none.
- 9.5 Wards/Communities Affected – none directly but indirectly the whole Borough.

**10 Conclusion**

10.1 In the view of officers the existing vehicle seating capacity policy achieved its aim of promoting passenger comfort. The views of James Button suggest there is also a valid reason for retaining the policy in terms of passenger safety. The Committee will need to determine if this additional information justifies reconsideration of the decision taken at the last meeting where the Committee felt that this policy is potentially over burdensome for the trade and removal is justified. If the Committee is minded to pursue removal of the policy it would be appropriate to allow a period of time for any feedback regarding the removal.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
Hackney Carriage and Private Hire Vehicle Licensing Guidelines			
<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.			
No of Annexes:	1		
Author:	Michael White	Ext:	8013
File Ref:	MW/		
Report to:	Licensing Committee	Date:	3 November 2016

## **Licensed Hackney Carriages and Private Hire Vehicles Seating Capacity Policy**

Report of the Head of Legal and Democratic (Portfolio: Corporate)

### **Recommended:**

**That the current policy for licensing of hackney carriages and private hire vehicles, in respect of seating capacity, be retained.**

#### **SUMMARY:**

- The Council has long since adopted a policy for vehicles licensed as hackney carriages and private hire vehicles of restricting the use of seats in certain types of vehicle which in the view of the Council do not afford passengers with sufficient space and comfort
- That policy has now been challenged by a Private Hire Vehicle Operator and it is necessary for the Committee to consider the appropriateness of that policy.

### **1 Introduction**

- 1.1 The Borough Council has a statutory role in licensing hackney carriages (taxis) and private hire vehicles (minicabs). There are currently 43 of the former and approximately 200 of the latter licensed by the Council. There is no approved national standard for licensed vehicles. The only requirements in respect of private hire vehicles are that the vehicle is: suitable in type, size and design; in a suitable mechanical condition; and safe and comfortable. There is no similar legislative provision for hackney carriages although Test Valley, like most other local licensing authorities, applies the same vehicle standards to both hackney carriages and private hire vehicles.

### **2 Background**

- 2.1 A local Private Hire Vehicle Operator has sought to license a Kia Carens as a six seater vehicle. This is a multi-purpose vehicle (MPV) which in common with many vehicles of that type has a third rear row of seats comprising two stow-away style seats of a different design than a typical car seat. When the vehicle was presented for licensing the Council's Vehicle Inspector (Transport Manager, Environmental Services) declared that the vehicle could be licensed to carry four passengers i.e. the rear row of seats was discounted because in the view of the Vehicle Inspector they did not afford sufficient space and comfort to any passengers sat in those seats. The operator now wishes to challenge this decision which in practice means a challenge to the policy.

2.2 In 2007 the Council formally adopted a hackney carriage and private hire vehicle licensing policy. Many of the matters in that policy were already in place but had never been previously formalised. In respect of seating capacity the policy states *“that that the Council would **not** be prepared to license any vehicle where passenger comfort was questionable as in the case of a vehicle where leg room in some of the rear seats is limited. In such a case the Council Vehicle Inspector may recommend that the vehicle be licensed for a lesser seating capacity than the manufacturers specification. As at April 2016 the following vehicles fall into this category: Vauxhall Zafira; Volkswagen Touran; and Ford S-Max”*. The vehicles listed were those known at the time of its last revision not to comply with the policy and clearly the list will change from time to time as the Council becomes aware of similar vehicles. Officers have always encouraged vehicle operators to contact the Council if they are unsure as to whether a particular vehicle would be affected by this policy.

2.3 The legislative background for this policy is that Section 48 of the Local Government (Miscellaneous Provisions) Act 1976 – which is the primary legislation for the licensing of Private Hire Vehicles – states that the Council may license a vehicle if they are satisfied that the vehicle is:

- (i) suitable in type, size and design for use as a private hire vehicle;
- (iv) safe; and
- (v) comfortable.

It is this legislation which allows the Council to license a vehicle for a lesser seating capacity than that specified by the manufacturer. The Council determines comfort not in terms of specifying a minimum measurement but in line with the above comments. It is the Council’s view that vehicles such as the Carens which have rear seats which fold into the floor do not afford sufficient leg room to provide an appropriate level of comfort to passengers.

2.4 The operator has asked if the Council would license the vehicle so that the rear two seats could only be used for children but the legislation does not allow the authority to distinguish between children and adults; the licence will state persons because it would be impractical to specify that a seat only be occupied by a child or an adult. The operator contends that both he and a colleague were able to sit comfortably in the rear seats, but the Council’s Vehicle Inspector believes that was not the case. By way of validation of the Council’s approach, officers found a review of the Carens on the internet at [www.autoexpress.co.uk/kia/carens](http://www.autoexpress.co.uk/kia/carens) which confirms the Council view by stating that: *All Carens models sold in the UK come with seven seats, but the two rear seats are for occasional use only. They're a little tricky to get in and out of, while head, leg and foot room are in short supply.* Further reviews such as that on the What Car site states *“access to the rear seats isn’t great”* whilst Autocar comments that *“these additional seats do not adjust and, as is standard across most of the segment, are only suitable for the shortest legs and lowest heads in the family”*.

The operator further contends that the Council is showing bias by licensing vehicles such as the Ford Galaxy for its full seating capacity but that vehicle has ordinary seats that do not fold flat into the floor and accordingly offer far greater legroom and comfort; for this reason the Galaxy is licensed for its full capacity of six. In summary the policy of not licensing certain vehicles for their full seating capacity is adopted for the purposes of passenger comfort and in the case of the Kia Carens officers believe it is entirely justified in making this decision.

### **3 Corporate Objectives and Priorities**

- 3.1 The licensing of hackney carriages and private hire vehicles is a statutory function which does not directly relate to the Council's corporate aims. However, the policy recommended for adoption will in the view of officers continue to maintain passenger comfort. Licensing of hackney carriages and private hire vehicles provides transport for the public who may not have any safe alternative means of transport available to them. The service provided by taxis plays a key role in the provision of an integrated public transport system.

### **4 Consultations/Communications**

- 4.1 There have been no communications on this matter other than those between the operator and officers. The operator has in his correspondence to officers made the point that other authorities will license the Kia Carens for its full seating capacity of six persons; equally officers can find numerous authorities – Portsmouth, Southampton, New Forest, Havant and Basingstoke are those most locally – that will only license it to carry four persons; consequently it can be argued that this part of the operator's submission carries little weight. Copies of the operator's letters to officers have been provided to members of the Committee.
- 4.2 The Council's Vehicle Inspector recalls the operator contacting the Council to ask about the suitability of licensing the car as a six seater. The Inspector spoke to the operator at some length about seating capacity and configuration and also undertook an internet search on the car as he was not familiar with that model of car. He was unable to establish from the information available what legroom, etc. was provided for the rearmost seats and so suggested that the vehicle be inspected before being submitted for its formal testing so that the seating could be agreed. The Inspector does not remember whether at that time the operator had said he had already purchased the car but he does remember telling him that as a worst case scenario the car would be licensed as a four seater.

### **5 Options and Option Appraisal**

- 5.1 As already mentioned there is no legal requirement to impose seating capacity limits or related standards regarding licensed vehicles. However, the introduction of such a policy was considered appropriate to ensure that maximum passenger comfort was achieved.

- 5.2 Whilst the licensing of hackney carriages and private hire vehicles must always be approached in the interests of the travelling public, the impact upon the trade cannot be ignored. However, other than the operator's complaint there is no evidence to suggest that the current policy has caused difficulties for any taxi operator. For those operators that wish to license a vehicle offering more than four seats there is a range of vehicles available that will provide a higher seating capacity without compromising on passenger comfort. For this reason alone it is the view of officers that the policy should be maintained. Alternatively, if the Committee feels that the current policy represents an unnecessary burden on operators and passenger comfort will not be compromised, it could consider removing the current restriction of not counting stow-away type seats when calculating seating capacity.

## **6 Resource Implications**

- 6.1 There are no direct resource implications for the Council as a result of this report. In the view of officers retention of the policy will not lead to any noticeable reduction or increase in the number of licensed vehicles. It is far more likely that market forces will dictate the optimum number and type of licensed vehicles.

## **7 Legal Implications**

- 7.1 Sections 47 and 48 of the Local Government (Miscellaneous Provisions) Act 1976 allow the Borough Council to attach such conditions to hackney carriage and private hire vehicle licences as it "may consider reasonably necessary". It is the view of officers that restricting the use of stow-away seats such as those found in the rear row of seats in the Kia Carens is reasonable and necessary for the achievement of passenger comfort. The same legislation allows a licence holder who is aggrieved by a licence condition to appeal that to the Magistrates Court. However, such an appeal would need to be lodged within 21 days of the licence being issued and that has not happened on this occasion. If the Council's policy is upheld then it is conceivable that the operator could lodge an appeal upon the occasion of his vehicle licence next being renewed in June 2017.

## **8 Equality Issues**

- 8.1 An Equalities Impact Assessment (EQIA) has not been undertaken as the proposed recommendation does not represent a significant policy change.

## **9 Other Issues**

- 9.1 Community Safety – none directly although the proper licensing of hackney carriages and private hire vehicles reduces the opportunity of illegal plying for hire by unlicensed vehicles.
- 9.2 Environmental Health Issues – none.
- 9.3 Sustainability and Addressing a Changing Climate – none.

9.4 Property Issues – none.

9.5 Wards/Communities Affected – none directly but indirectly the whole Borough.

**10 Conclusion**

10.1 In the view of officers the existing vehicle seating capacity policy has achieved its aim of promoting passenger comfort. The Committee must consider whether this policy is over burdensome for the trade and whether removal is appropriate. Whilst the operator makes some good points about why his vehicle should be licensed for its full capacity of six passengers, officers believe it would not be best practice to lower a standard that has been applied with the best interests of the travelling public in mind.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
Hackney Carriage and Private Hire Vehicle Licensing Guidelines			
<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.			
No of Annexes:	None		
Author:	Michael White	Ext:	8013
File Ref:	MW/		
Report to:	Licensing Committee	Date:	8 September 2016

**ITEM 7**

**Exclusion of the Public**

**Recommended:**

**That pursuant to Regulation 4 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the public be excluded from the meeting for the consideration of reports on the following matters on the grounds that they involve the likely disclosure of exempt information as defined in the following Paragraphs of Part 1 of Schedule 12A of the Local Government Act 1972, as amended, indicated below. The public interest in maintaining the exemption outweighs the public interest in disclosing the information for the reason given below:**

**Refusal of Dual Driver's Licence Application**

**Paragraphs 1, 2 & 7**

It is considered that this report contains exempt information within the meaning of paragraph 1, 2 & 7 of Schedule 12A of the Local Government Act 1972, as amended. It is further considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information because the information relates to a named individual, could reveal the identity of an individual and relates to action taken in connection with the prevention, investigation or prosecution of crime.