

Body: General Licensing Committee

Date: 11th November 2009

Subject: Second review of decision in April 2009 to remove the limit on the number of hackney carriage proprietor licences, linked to a policy of Quality Control.

Report Of: Karen Plympton, Licensing Manager

Ward(s): All

Purpose: Second review of decision in April 2009 to remove the limit on the number of hackney carriage proprietor licences, linked to a policy of Quality Control to assess the delimitation policy , and to inform the Council's future approach to hackney carriage proprietor licences.

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1.0 Overview

- 1.1 The purpose of the hackney carriage and private hire licensing regime is to ensure the provision of a safe, accessible service. Public safety is of paramount importance.
- 1.2 The service provided by the hackney carriage and private hire trade plays a key role in the provision of an integrated transport system. Decisions taken by the Licensing Authority should be approached in the interests of the travelling public.
- 1.3 The Full Licensing Committee agreed to remove the limit on the number of hackney carriage proprietor licences, adopting de-limitation linked to a policy of quality control following meetings in March and April 2009. At a subsequent review meeting in July 2009, Members directed that a De-limitation Review Group be formulated to monitor the decision and that a further Committee would be held in 3 months, that being November 2009.
- 1.4 Nationally, it appears that only 25 per cent of licensing authorities place a limit on the number of hackney carriage proprietor licences, thereby operating quantity restrictions. These areas tend to be large urban conurbations.
- 1.5 The Authority is not permitted to dictate or control the number of private hire vehicle licences or operators in the Borough. Currently, there are 323 licensed private hire vehicles.

2.0 Historical Position

- 2.1 In 1976, the number of hackney carriage proprietor licences stood at 84. Licences issued prior to 2006 do not have any conditions aligned to use, save for the standard hackney carriage vehicle conditions applied to the entire fleet. These remain as such, and may be replaced on a "like for like" principle, fulfilling the principles of a "mixed fleet."

- 2.3 A "mixed fleet of licensed" vehicles is being retained to cater for the differing needs of the travelling public. It is recognised that there is no one single vehicle specification or type that caters for the spectrum of requirements of the travelling public. The concept of a "mixed fleet" also mirrors the recommendations of the Department for Transport.
- 2.4 In 2006, following an unmet demand survey, the Committee agreed to release a further 6 hackney carriage proprietor licences, taking the total to 90.
- 2.5 This 6 continue to be subject to a series of terms and conditions, including a requirement that vehicles are wheelchair accessible, attain European Whole Vehicle Type Approval, and associated safety standards and are not more than a specified age when entering the trade.

3.0 The Decision

- 3.1 On 9th March 2009, the Full Licensing Committee met to determine its future approach in relation to the provision of hackney carriage proprietor licences in the Borough.
- 3.2 This review came about following pressure from Central Government to relax the restriction on licences, the expiry of the current unmet demand survey in October 2009, a petition from the Disability Involvement Group, and a need for the Council to review its overall future approach.
- 3.3 In March 2009, the Full Licensing Committee removed all limits on the number of hackney carriage proprietor licences. In April 2009, it further agreed a Quality Control Policy linked to the release of future licences. The Quality Control Policy is included at Appendix 1.
- 3.4 Members agreed that the delimitation Policy be reviewed after 5 new licences had been issued or after 3 months of the implementation date of the Policy.
- 3.5 As a result, the Full Committee met again in July 2009. Members were advised that 51 enquiries had been received from mainly existing hackney carriage and private hire drivers. 4 licences had been issued since delimitation, linked to the Quality Control Policy. At this meeting, Members directed that a De-limitation Review Group be formulated to monitor the decision.
- 3.6 Since July 2009, the Licensing Team has issued a further 3 hackney carriage proprietor licences and dealt with 9 enquiries from "interested parties."
- 3.7 At the time of writing this report a cumulative total of 7 hackney carriage proprietor licences have been issued since the decision to de-limit. These have been issued to individuals already licensed by Eastbourne and operating as private hire drivers or as journeymen.
- 3.8 A journeyman is an individual who pays a premium to rent the licence/vehicle from an existing hackney carriage proprietor. The average cost of "renting" the plate/vehicle by a journeyman is approximately £100 a week.
- 3.9 This demonstrates that a number of hackney carriage and private hire drivers licensed by Eastbourne, and other "interested parties" who want to enter the taxi market and provide a service to the public, were previously prevented from obtaining a hackney carriage proprietor licence other than by way of purchasing

a plate/licence from an existing proprietor, at a cost of around £15,000, because of the restriction on hackney carriage proprietor licences.

- 3.10 This position altered following the decision to delimit linked to quality control. Delimitation offers choice and affords individuals with the opportunity to provide the service, subject to meeting the requirements of the quality control policy.
- 3.11 At the last Full Licensing Committee, some of the hackney carriage and private hire trade expressed concern that the policy of de-limitation would result in excessive growth in the number of hackney carriage proprietor licences being granted and hence plying for hire and ranking in Eastbourne.
- 3.12 7 hackney carriage proprietor licences have been issued since the decision to de-limit in April 2009, a total of 97. This equates to 13 licences since 1976, a period of 33 years.
- 3.13 Set alongside the Quality Control Policy, there are other factors that have an impact on this situation, which are the current economic climate and the level of capital outlay. In excess of £25,000 is required to obtain a suitable vehicle and a qualification to be eligible to obtain a new hackney carriage proprietor licence.
- 3.14 This provides a natural mechanism to effectively manage the type and number of hackney carriage proprietor licences being issued and therefore licensed vehicles entering the trade. It also seeks to raise driver standards. It is a commonly held view within licensing authorities that limiting licences does not provide the travelling public with the best possible service, and has resulted in many taking the decision to delimit.
- 3.15 A further mechanism that has regulated the number of individuals applying to become a hackney carriage proprietor can be attributed to the recent cap on the number of permits issued to vehicles seeking to operate from the railway station "rank." Proprietors pay a premium to use this, as it is privately owned. The taxi trade advise that the railway station is considered to be the most financially viable rank; hence the cap on permits has deterred new applicants.
- 3.16 However, this may also act as an incentive for non permit holders to service other under utilized ranks, and encourage the travelling public to use these instead, reducing the pressure at the railway station.
- 3.17 It is pertinent to note that 2 individuals who had originally made application for a hackney carriage proprietor licence have advised the Licensing Team that they do not wish to pursue the matter. This means that at the time of writing this report, 7 licences have been issued, with no applications outstanding.
- 3.18 The levelling out of applications and enquiries mirrors the pattern of behaviour across Sussex where delimitation has occurred, and accords with the views of James Button, Licensing Solicitor who suggests that:

"Many Authorities take the view that limiting hackney carriage numbers is an unacceptable form of protectionism which does not provide the travelling public with the best service....where quantity control provisions remain in place....the market will find a level for the number of hackney carriages an area can sustain."

4.0 Consultation Process

De-Limitation Review Group

- 4.1 Following direction from the Full Licensing Committee in July 2009, the De-limitation Review Group was formulated to assess the de-limitation policy and to inform the Council's future approach to hackney carriage licensing. This comprised members of the hackney carriage and private hire trade, Councillors, Council Officers, and a representative from the Disability Involvement Group. A representative from East Sussex County Council was also invited.
- 4.2 The review sought to consider the extent to which the Council's policy of delimitation, linked to a policy of quality control, has been successful and met its objectives of meeting the needs of the travelling public.
- 4.3 A copy of the minutes relating to both meetings held in September and October 2009 is included at Appendix 2, however it should be noted that consultation and work is ongoing in this regard.

East Sussex Disability Association (ESDA)

- 4.4 Nick Tapp, Deputy Chief Executive from ESDA continues to support the policy of de-limitation linked to quality control to improve availability and the accessibility of taxis for disabled people. A copy of his feedback is contained at Appendix 3.

Sussex Police

- 4.5 Both Chief Inspector Dando and Inspector Rachel Barrow support the continuation of the de-limitation policy since taxis are an integral part of the transport network in facilitating dispersal late at night, thereby minimising the opportunity for crime, disorder, noise and nuisance. They are also keen to see improved use of existing taxi ranks across the town as a means to take the pressure off the rank at the railway station and to encourage the public to use alternative ranks throughout the town . A full copy of their feedback will be forwarded under separate cover.

Disability Involvement Group (DIG)

- 4.6 The Disability Involvement Group (DIG) support the continuation of the delimitation policy linked to quality control in order to improve the availability and accessibility of taxis for disabled people. It recommends the continuation of a "mixed fleet" since its members have a broad range of requirements with some being unable to use Wheelchair Accessible Vehicles (WAVs.). A full copy of their feedback is included at Appendix 4.
- 4.7 Significant work has been undertaken with the DIG and Railway Station Manager in order to progress the public information notices to advise members of the public on the most appropriate way of sourcing a licensed vehicle which best meet their needs. This will be concluded in the near future.
- 4.8 In addition, the Licensing Team is continuing to investigate Disability Awareness Training for all drivers to facilitate the safe transportation of passengers in licensed vehicles.

Business Crime Group – Nightwatch

- 4.9 Nightwatch is a partnership between businesses forming the evening and night time economy, Sussex Police and the Council to tackle crime, anti social behaviour and disturbance.
- 4.10 The Group supports the continuation of the de-limitation policy in order to facilitate dispersal late at night from their venues, and identified that on occasions, its patrons found it difficult to get a taxi. This view is also supported by the Business Crime Manager, Trish Pybous and Penny Shearer, Economic Development Manager. An extract from the Nightwatch meeting on 10 September 2009 is included at Appendix 5.

Trade Views

- 4.11 At the time of writing this report, no written feedback has been received from the hackney and private hire trade. However, this will be forwarded under separate cover once received.
- 4.12 However, feedback from the Delimitation Review Group indicate that the primary concerns of the trade relate to the economic downturn, a loss in earnings, with work spread across a greater number of vehicles and drivers, a longer wait between fares, the need to work longer hours to earn a living and congested/unviable ranks. A list of the available ranks is included at Appendix 6.

Department For Transport Best Practice Guidance

- 4.13 The Department For Transport's latest Guidance continues to consider delimitation as best practice and that the issue should be approached in the interests of the travelling public. An extract of the Guidance regarding delimitation is included at Appendix 7.

CIPFA "Family Group" and Sussex Comparisons

- 4.14 The CIPFA Nearest Neighbour Model was developed to aid local authorities in comparative and benchmarking exercises with specific family groups, based upon a wide range of geographic, size and socio-economic indicators.
- 4.15 Each local authority is unique. Not only are its social and physical characteristics different to those of other authorities, but its traditions, organisation and practices are distinctive. The CIPFA Nearest Neighbours Model adopts a scientific approach to measuring the similarity between authorities, taking these issues into account.
- 4.16 Research undertaken by the Licensing Team in October 2009, provides an overview of the Sussex wide approach, and wider "Family Group" comparisons in relation to hackney carriage proprietor licensing and policies therein.
- 4.17 This demonstrates an ongoing trend towards de-limitation, but with many linked to policies of quality control. This is detailed in Appendix 8.

5.0 Legal Perspective

- 5.1 The law does not offer authorities a straight choice between a restricted and unrestricted policy.

- 5.2 The rationale behind the introduction of Section 16 of the Transport Act 1985 was that local authorities would no longer be able to control the number of hackney carriage proprietor licences. The Act, and the Office of Fair Trading and Department for Transport Guidance points licensing authorities towards a market led and unrestricted system, thereby removing restrictions and delimiting numbers.
- 5.3 Most Local Authorities do not impose quantity restrictions and in the Department of Transport's Good Practice Guide, this is regarded as best practice.
- 5.4 It suggests that any decision relating to issues of restricting the number of licences should be approached in the interests of the travelling public and it asks what benefits or disadvantages arise for them as a result of the imposition of restrictions and conversely, the removal of these restrictions.
- 5.5 Section 16 provides that the grant of a hackney carriage licence may be refused for limiting the number of licensed taxis but only if the Authority is satisfied that there is no significant unmet demand for the services of hackney carriages. The issue of unmet demand is assessed across the whole of the Council area, not just the town centre.
- 5.6 If the Council decides to revert back to a policy of restricting the number of licences, it may face a legal challenge through the Courts if it is minded to refuse licences, unless there is a sound evidence base to demonstrate that there is no significant unmet demand.
- 5.7 Case law allows restrictions to be imposed if the Local Authority is satisfied that there is no unmet demand for hackney carriage services in the area.
- 5.8 Unmet demand can only be properly measured through conducting a comprehensive survey. If a policy option restricting the numbers of licences were to be adopted and no survey or an inadequate survey had been undertaken, then the decision would be unlawful and open to challenge through the courts and/or judicial review. This could have financial consequences for the Authority as well as significant risk and reputation issues.
- 5.9 The Department For Transport Circular 4/87 states:
- a) A council may adopt a policy of removing the restriction on the number of taxi licences that it issues without considering the issue of demand
 - b) It is not open for a Council which is unsure of the presence or absence of significant unmet demand to refuse to grant an application for a hackney carriage licence for the purpose of limiting the number of licences
- 5.10 However, in the case of Eastbourne, a survey is not required since the Authority has already removed the limit on the number of hackney carriage proprietor licences, albeit linked to a policy of quality control.
- 5.11 A survey is only required where an Authority had limitations in place and seeks to justify those limits. If limits are re-imposed without a valid survey being in place or pending the outcome of a survey, the Council would be open to legal challenge if applications are received and rejected on the basis of unmet demand.

- 5.12 The Courts have ruled in the past that in certain circumstances it is open to an Authority to defer decisions on new vehicle licence applications pending the outcome of a survey. The circumstances currently applying in Eastbourne would not justify this however. The policy has only been in place for 6 months, is subject to strict quality control restrictions and only a comparatively small number of new licences have been issued. Even a deferral in these circumstances would be difficult to defend.
- 5.13 Members may wish to consider whether the re-imposition of restrictions and limits on the number of licences is in the best interests of the travelling public and offers the best service, whilst taking into consideration the views of the taxi trade. Any decision taken should primarily consider the needs of the travelling public.
- 5.14 Due weight must also be given to the views of Sussex Police, the hackney carriage and private hire trade, the various groups representing disabled people, as well as the views of businesses in the town.
- 5.15 However, any decision that is taken should be evidence based and able to be defended in the event of a legal challenge through the Courts.

6.0 Community Safety Issues

- 6.1 The overriding concern that the Council as Licensing Authority must consider is the provision of a safe, accessible service approached in the interests of the travelling public.
- 6.2 It is recognised that the hackney carriage and private hire trade play a key role in the provision of an integrated transport system. The safe transportation of the public, and the provision of a service at key times facilitates dispersal and has an impact on wider community safety objectives.
- 6.3 Research by the Licensing Team demonstrates that alternative transport services in the form of buses and trains generally terminate at 2300 hours and 0100 hours respectively. This re-iterates the importance of hackney and private hire vehicles in servicing the town as part of the evening and night time economy.

7.0 Options Open To The Committee

- 7.1 In summary, the Committee has a range of options open to it:
- (1) Delimit entirely, and remove the quality control policy.
 - (2) Maintain the current position, that is de-limitation linked to a policy of quality control.
 - (3) Maintain the current position, that is de-limitation linked to a policy of quality control and review again at a future point, for example 12 to 18 months.
 - (4) To re-impose a limit on a number of licences; or
 - (5) Consider a policy of managed growth.

- 7.2 It must be emphasised again that if the Committee is not minded to adopt options 1, 2 or 3 all it can lawfully resolve to do is to commission a survey and then consider all the options afresh based on that survey once it has been carried out and published.

8.0 Human Resource & Financial Implications

- 8.1 The cost of administering the Taxi & Private Hire Licensing function is fully recovered via the licence fee income. Should members decide that an unmet demand survey is required, at an approximate cost of £25000, this will need to be recovered via the hackney carriage trade licence fees.

9.0. Human Rights Act 1998

- 9.1 The provisions of the Human Rights Act, 1998, must be borne in mind by the Full Committee when taking licensing decisions. Particular regard should be had to Article 1 of the First Protocol, which relates to the protection of property and the peaceful enjoyment of possessions and property.
- 9.2 Article 8 - which relates to the right to respect for private and family life, home and correspondence - should also be borne in mind. While the Human Rights Act makes it unlawful for a local authority to act or to fail to act in a way that is incompatible with a Convention right.
- 9.3 Article 1 of the First Protocol and Article 8 are both qualified rights which means that interference - to a justifiable extent - may be permitted as long as what is done:
- Has a basis in law;
 - Is intended to pursue a legitimate purpose
 - Is necessary and proportionate; and
 - Is not discriminatory.

Background Papers

- Local Government (Miscellaneous Provisions) Act 1976
- Town Police Clauses Act 1847
- Halcrow Fox Study For Unmet Demand, 2000
- MCL Study of Demand For Hackney Carriages August 2006
- Department For Transport, Taxi and Private Hire Vehicle Licensing Best Practice Guidance.
- R V Swansea City Council ex parte Jones
- Taxi s, Licensing Law and Practice, Edition 2. James Button.
- R V City of Newcastle ex parte Blake
- Department of Transport Guide Best Practice Guide – Taxi and Private Hire Licensing 2006
- Department of Transport "Taxi Licensing: Review of Local Authority Quantity Control Policy 2008
- White Paper, "A New Deal For Transport, Better For Everyone," HMO 1996
- Kelly and Smith V Wirral Metropolitan Borough Council 2006