

# LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

## Agenda Item 13

Brighton & Hove City Council

**Subject:** *Hackney Carriage Unmet Demand Survey*

**Date of Meeting:** **26 November 2009**

**Report of:** *Director of Environment*

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**Wards Affected:** All

### FOR GENERAL RELEASE

#### 1. SUMMARY AND POLICY CONTEXT:

To present the results of the Hackney Carriage Unmet Demand Survey and to give various options available to members to advise the executive. The summary and conclusions section of the survey report is appended (Appendix A).

#### 2. RECOMMENDATIONS:

- 2.1 That committee recommends to keep the current number of hackney carriage vehicle licences at 528 **or**;
- 2.2 Recommends to continue to increase the number of hackney carriage vehicle licences issued by the council by 5 annually, such licences to be issued in May each year commencing in May 2010 **or**;
- 2.3 Recommend to continue to increase the number of hackney carriage vehicle licences issued by the council by a reduced number of 2 annually (or such number as the committee advises), such licences to be issued in May each year commencing in May 2010 **or**;
- 2.4 Recommend removing the limit on the number of hackney carriage vehicles issued and allow a free entry policy to vehicles, which are constructed or adapted and configured to carry passengers seated in wheelchairs, the type and design of the vehicle to be agreed by the Director of Environment.
- 2.5 Recommend any additional licences issued under 2.2 & 2.3 above should be issued in accordance with the conditions attached to the Brighton & Hove City Council Hackney Carriage Vehicle Licence Waiting List and to vehicles which are constructed or adapted and configured to carry passengers seated in wheelchairs, the type and design of the vehicle to be agreed by the Director of Environment).

### **3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

- 3.1 The council licenses hackney carriage vehicles and private hire vehicles. The principal differences between the two licensing regimes are (i) hackney carriages can ply for hire in the streets and at taxi ranks whilst private hire vehicles can only accept bookings made through a private hire operator (ii) powers exist to limit the numbers of hackney carriages in prescribed circumstances but there is no power to limit the number of private hire vehicles (iii) the council prescribes fares for hackney carriages but has no power to determine fares for private hire bookings.
- 3.2 This council last reviewed its policy of quantity control of hackney carriages on 27 November 2008.
- 3.3 This latest review aims to address two key issues (i) the number of hackney carriage vehicles (ii) the percentage of those vehicles which are wheelchair accessible.
- 3.4 Section 16 of the Road Transport Act 1985 gives the council the power to refuse the grant of a licence for the purpose of limiting the number of hackney carriage vehicles within its area, but only if it is satisfied that there is no significant demand for the service of hackney carriages within its area which is unmet. At present council policy limits the number of hackney carriage vehicle licenses to 528 with 5 additional licenses issued annually in May.
- 3.5 The Department of Transport has issued Best Practice guidance regarding limiting numbers policies. (Appendices B). Most local licensing authorities do not impose quantity restrictions; the Department regards that as best practice.
- 3.6 Because of its policy of limiting numbers, from time to time the council must commission an independent study to establish whether there is any significant unmet demand for the service of hackney carriages in Brighton and Hove. The Council recently commissioned such a study from independent transport consultants, Halcrow Group Limited, who produced their study report in October 2009.
- 3.7 In view of the study findings which found there to be no significant unmet demand Members have a discretion to recommend to the council one of the following options: either (i) delimit, i.e. to remove the limitation on numbers; or (ii) continue with a restricted numbers policy but allow expansion of the fleet in a controlled manner; or (iii) keep the current number of hackney carriages vehicle licences at 528.
- 3.8 If Members decide to recommend to keep the current level of licences at 528 then the council would be required to commission a further survey to assess demand in around 3 years time. If Members decide to continue with a restricted numbers policy but with a policy of managed growth in line with

paragraph 2.1 or 2.2 then the council would be required to commission a further survey to assess demand in around 3 years time. If Members decide to delimit the council would not be required to commission a further survey.

- 3.9 The council maintains a waiting list for hackney carriage vehicle licences which currently has 114 applicants on it. It is recommended that all additional licences be offered to applicants in accordance with the conditions attached to the waiting list. This means that they would be offered to applicants according to their position on the list.
- 3.10 There are two potential avenues of legal challenge; an aggrieved party could seek judicial review of the committee's decision, and applicants on the waiting list could appeal against the refusal of a licence to the Courts.

#### **4. THE TYPE OF VEHICLE TO BE LICENSED:**

- 4.1 Taxis provide an important means of transport for disabled people and are often the only viable option available. The council's hackney carriage fleet is mixed; consisting of saloon cars and specially constructed or adapted wheelchair accessible vehicles. Locally, representatives of disabled groups have asked for the continued provision of a mixed fleet. This reflects the differing needs and preferences of the travelling public, including those who find it difficult to negotiate entry into wheelchair accessible vehicles and to sit down easily, and those confined to travelling in wheelchairs. However there is general consensus that there are too few disabled accessible vehicles.
- 4.2 Although unrelated to the concept of significant unmet demand in the 1985 Transport Act, Halcrow were asked to look at the issue of wheelchair accessibility via telephone bookings. Halcrow has identified significantly longer waiting times for wheelchair accessible vehicles compared with ordinary saloon cars when booked by telephone. To alleviate this discrepancy they estimate that an additional 428 wheelchair accessible vehicles are required. It should be noted that this demand is principally a private hire demand and the requirement for additional accessible vehicles is not necessarily a requirement for more licensed vehicles, but for greater accessibility.
- 4.3 Members are therefore recommended to require that additional hackney carriage licences are restricted to wheelchair accessible vehicles. This will underline the council's commitment to those who suffer physical disability. However, in the interests of continuing to maintain a mixed fleet this policy, if continued, would need to be reviewed after a suitable interval, for example when the next unmet demand survey is undertaken.
- 4.4 If Members decide not recommend to so restrict the vehicles, then there is a risk of legal challenge from hackney carriage licence holders who were previously issued licences for wheelchair accessible vehicles, on the ground that the restriction on their licences is unreasonable. If successful, this would lead to a reduction in the number of wheelchair accessible vehicles.

In view of the survey findings, disability interest groups or individuals might also challenge such a decision.

## **5. RELATED ISSUES:**

- 5.1 The main purpose of the survey was to determine whether or not there exists a significant unmet demand for hackney carriages and to determine the number of licences required to meet any identified unmet demand. There are other related issues which the council needs to keep under review in the longer term, such as the response to telephone bookings for wheelchair accessible vehicles referred to in 4.2 above, initiatives to encourage hackney carriage and private hire drivers to work unsociable hours, particularly at the weekends when there are peaks in night-time demand, the level of fares and measures to improve driver and passenger safety.
- 5.2 Crime reduction initiatives such as driver safety screens and in-car CCTV cameras have previously been supported by Committee. Other initiatives are still being developed including links with the community safety team and improved partnership between the taxi trade and the police. The level of fares are reviewed regularly including the question of whether there is justification to increase the differential between daytime and night-time fares to encourage drivers to work at times of peak demand.

## **6. CONSULTATION:**

- 6.1 Officers have consulted with trade representatives on the Hackney Carriage and Private Hire Consultation Forum, including attending a meeting with the consultant, forum members and the police to discuss points the trade wished to clarify.
- 6.2 Halcrow's consultations were with Hackney Carriage and Private Hire Trade Representatives; Taxis Operators; Disability representatives and Social Services; and Police and Community Safety Partnership.

## **7. FINANCIAL & OTHER IMPLICATIONS:**

### **7.1 Financial Implications:**

- The cost of the current Unmet Demand Survey was met from within existing revenue budgets. The cost of future Unmet Demand Surveys will be contained within the annual licence fee for all hackney carriages.
- The Council sets the fee rates for both hackney carriages and private hire vehicles. Total income in 2008-9 from fees was £285,000.
- If the number of hackney carriages is allowed to increase this will not necessarily result in an increase in income overall, as it may be offset by a reduction in private hire vehicles.
- If the decision is taken to continue with a limitation policy, then there is the possibility of a legal challenge to the decision in court. The costs of

any such challenge would have to be met from within existing budgets, funded from the fee income.

- If the decision is taken to delimit the number of taxis, then subsequent monitoring of taxi ranks may reveal a need to expand their size or number, which the Council would be responsible for funding. Such costs could range from a few hundred pounds to a few thousand pounds, depending on the specific circumstances.

*Finance Officer Consulted: Karen Brookshaw*

*Date: 24/10/2009*

## 7.2 Legal Implications

These are dealt with in the body of the report.

*Lawyer Consulted: Rebecca Sidell*

*Date: 23/10/2009*

## 7.3 Equalities Implications:

The Department of Transport had planned to make taxi accessibility regulations under the Disability Discrimination Act but admitted that it could not be achieved in a way that would be acceptable to both disabled people and the taxi trade for the time being. It is recommended that Councils make their own policy concerning accessible taxis in their area.

To issue extra licences each year will counter criticism that the hackney carriage vehicle licence waiting list may be discriminatory because it does not move as no extra licences are issued.

## 7.4 Sustainability Implications:

The role of the taxi trade is included in the Local Transport Plan, which identifies it as a key element in providing sustainable transport choices. It creates important links in the transport network to other forms of sustainable transport providing a seamless connection. It will contribute to three of the government's four shared transport priorities – reducing congestion, improving air quality and accessibility. Use of taxis for school transport, licensed vehicles using bus lanes, locating ranks at railway stations and the city coach station, approved use of liquid petroleum gas all contribute to reducing congestion and moving passengers quickly.

## 7.5 Crime & Disorder Implications:

Sufficient late night transport to reduce public place violent crime is recognised in the community safety, crime reduction and drugs strategy. The presence of CCTV can be an important means of deterring and detecting crime.

7.6 Risk and Opportunity Management Implications:

The transport industry should be safe, profitable and be a positive experience for residents and visitors.

7.7 Corporate / Citywide Implications:

Tourism needs to provide a warm welcome to visitors and the tourism strategy depends upon effective partnership with transport operators particularly to achieve safe late night dispersal for the night time economy.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

- A. Summary and Conclusions from the Halcrow Group Limited Hackney Carriage Demand Survey – October 2009.
- B. Taxi and Private Hire Vehicle Licensing: Best Practice Guidance 2005 (Department for Transport).

### **Documents in Members Rooms:**

- 1. None.

### **Background Documents:**

- 1. None.

## Summary and Conclusions

### *Introduction*

Halcrow has conducted a study of the hackney carriage market on behalf of Brighton & Hove City Council.

The present study has been conducted in pursuit of the following objectives:

- to identify whether or not there exists a significant unmet demand for hackney carriage services in Brighton and Hove;
- to recommend the increase in licences required to eliminate any significant unmet demand; and
- to assess any significant unmet demand for disabled access hackney carriage vehicles at ranks and telephone booked demand.

This section provides a brief description of the work undertaken and summarises the conclusions and implications for regulatory policy.

### ***Significant Unmet Demand***

The 2009 study has identified that there is NO evidence of significant unmet demand for hackney carriages in Brighton & Hove. This conclusion is based on an assessment of the implications of case law that has emerged since 2000, and the results of Halcrow's analysis.

On this basis the authority has discretion in its hackney licensing policy and may either:

- continue to limit the number of vehicles at 528 with additional wheelchair accessible licences issued annually as the authority sees fit;
- issue any number of additional plates as it sees fit, either in one allocation or a series of allocations; or
- remove the limit on the number of vehicles and allow a free entry policy.



### ***Summary of Consultation – Interested Parties***

The Department for Transport had requested that licensing authorities consult widely to inform their policy making in respect of continued entry control to the hackney carriage market. In addition to the consultation that has routinely been included in previous market studies (correspondence with interested parties), Halcrow has followed the prescribed approach and sought the views of all those involved in the taxi trade.

Stakeholders were generally happy with the numbers of hackney carriages but highlighted more wheelchair accessible vehicles should be made available. Particular problems were highlighted with regard to the availability of accessible vehicles at school contract times. Reference was made to the need to improve driver training opportunities. Rank availability was the other key issue highlighted. It is clear stakeholders do not all consider ranks are sufficient or in the right location.

### ***Summary of Consultation – General Public***

Some 493 interviews were carried in June 2009. The key results are as follows:

- Some 63% of respondents had used a taxi in Brighton & Hove within the last three months;
- High levels of satisfaction with delay on last trip
- Some 13% of respondents had given up trying to obtain a vehicle by rank or flagdown;
- Some 55% of respondents feel that taxi services in Brighton & Hove could be improved (need to be cheaper); and
- Majority of respondents felt safe using taxis during the day and night;
- Some 68% of respondents said that they would not be willing to pay a surcharge to fund marshals; and
- Some 44% of respondents stated that they would use pedicabs.

### ***Summary of Consultation – Trade***

Some 506 members of the trade responded to a trade survey. The key results are as follows:

- The majority of the hackney carriage trade and private hire trade thought training was not sufficient and English language training in particular was required;
- Majority of drivers feel safe some of the time whilst working in Brighton and Hove;
- Some 89% of hackney carriage respondents stated that there was not sufficient rank space in Brighton and Hove; and
- Some 41% of hackney respondents stated that they would leave the trade should the authority de-restrict.

### ***Conclusions***

The 2009 study has identified that there is NO evidence of significant unmet demand for hackney carriages in Brighton & Hove. This conclusion is based on an assessment of the implications of case law that has emerged since 2000, and the results of Halcrow's analysis.

On this basis the authority has discretion in its hackney licensing policy and may either:

- continue to limit the number of vehicles at 528 with additional wheelchair accessible licences issued annually as the authority sees fit;
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## Item 13: APPENDIX B

### Taxi and Private Hire Vehicle Licensing: Best Practice Guidance 2005 (Department for Transport)

The present legal provision on quantity restrictions for taxis outside London is set out in section 16 of the Transport Act 1985. This provides that the grant of a taxi licence may be refused, for the purpose of limiting the number of licensed taxis 'if, but only if, the [local licensing authority] is satisfied that there is no significant demand for the services of hackney carriages (within the area to which the licence would apply) which is unmet'.

Local licensing authorities will be aware that, in the event of a challenge to a decision to refuse a licence, the local authority concerned would have to establish that it had, reasonably, been satisfied that there was no significant unmet demand.

Most local licensing authorities do not impose quantity restrictions; the Department regards that as best practice.

Where restrictions are imposed, the Department would urge that the matter should be regularly reconsidered. The Department further urges that the issue to be addressed first in each reconsideration is whether the restrictions should continue at all. It is suggested that the matter should be approached in terms of the interests of the travelling public - that is to say, the people who use taxi services. What benefits or disadvantages arise for them as a result of the continuation of controls; and what benefits or disadvantages would result for the public if the controls were removed? Is there evidence that removal of the controls would result in deterioration in the amount or quality of taxi service provision?

In most cases where quantity restrictions are imposed, vehicle licence plates command a premium, often of tens of thousands of pounds. This indicates that there are people who want to enter the taxi market and provide a service to the public, but who are being prevented from doing so by the quantity restrictions. This seems very hard to justify.

If a local authority does nonetheless take the view that a quantity restriction can be justified in principle, there remains the question of the level at which it should be set, bearing in mind the need to demonstrate that there is no significant unmet demand. This issue is usually addressed by means of a survey; it will be necessary for the local licensing authority to carry out a survey sufficiently frequently to be able to respond to any challenge to the satisfaction of a court. An interval of three years is commonly regarded as the maximum reasonable period between surveys.

As to the conduct of the survey, the Department's letter of 16 June 2004 set out a range of considerations. But key points are:

- **the length of time that would-be customers have to wait at ranks.** However, this alone is an inadequate indicator of demand; also taken into account should be...
- **waiting times for street hailings and for telephone bookings.** But waiting times at ranks or elsewhere do not in themselves satisfactorily resolve the question of unmet demand. It is also desirable to address...
- **latent demand**, for example people who have responded to long waiting times by not even trying to travel by taxi. This can be assessed by surveys of people who do not use taxis, perhaps using stated preference survey techniques.
- **peaked demand.** It is sometimes argued that delays associated only with peaks in demand (such as morning and evening rush hours, or pub closing times) are not 'significant' for the purpose of the Transport Act 1985. The Department does not share that view. Since the peaks in demand are by definition the most popular times for consumers to use taxis, it can be strongly argued that unmet demand at these times should not be ignored. Local authorities might wish to consider when the peaks occur and who is being disadvantaged through restrictions on provision of taxi services.
- **consultation.** As well as statistical surveys, assessment of quantity restrictions should include consultation with all those concerned, including user groups (which should include groups representing people with disabilities, and people such as students or women), the police, hoteliers, operators of pubs and clubs and visitor attractions, and providers of other transport modes (such as train operators, who want taxis available to take passengers to and from stations);
- **publication.** All the evidence gathered in a survey should be published, together with an explanation of what conclusions have been drawn from it and why. If quantity restrictions are to be continued, their benefits to consumers and the reason for the particular level at which the number is set should be set out.
- **financing of surveys.** It is not good practice for surveys to be paid for by the local taxi trade (except through general revenues from licence fees). To do so can call in question the impartiality and objectivity of the survey process.

Quite apart from the requirement of the 1985 Act, the Department's letter of 16 June 2004 asked all local licensing authorities that operate quantity restrictions to review their policy and justify it publicly by 31 March 2005 and at least every three years thereafter. The Department also expects the justification for any policy of quantity restrictions to be included in the five-yearly Local Transport Plan process.