

LICENSING AND APPEALS COMMITTEE
23 November 2010

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

6

TITLE OF REPORT: PROPOSED HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING POLICY 2011-16

REPORT OF THE STRATEGIC DIRECTOR OF HOUSING, PLANNING & ENTERPRISE

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to summarise the responses to the public consultation in respect of the Council's Hackney Carriage and Private Hire Licensing Policy.
- 1.2 The Licensing and Appeals Committee, having considered this report, can make a recommendation to Cabinet in respect of the Policy.

2. FORWARD PLAN

- 2.1 This report contains a recommendation on a key decision that was first notified in the Forward Plan on 1st September 2010.

3. BACKGROUND

- 3.1 Prior to 2008, North Hertfordshire District Council had exercised its responsibility of licensing hackney carriages and private hire vehicles through a number of different policies, conditions and procedures that had been developed over a number of years.
- 3.2 The legislation regulating hackney carriages dates back to the Town Police Clauses Act 1847, whilst private hire vehicles are regulated by the Local Government (Miscellaneous Provisions) Act 1976.
- 3.3 Given the age of the regulating legislation and the piecemeal format of policies and conditions, it was considered necessary to re-evaluate the whole licensing process in relation to hackney carriages and private hire vehicles. Following a public consultation, a new Hackney Carriage and Private Hire Licensing Policy was introduced with effect from 7th January 2008 following adoption by Cabinet.
- 3.4 The Policy was adopted as a three year policy ending on 6th January 2011 and has been an effective document in ensuring consistency of approach by officers thus ensuring fairness and transparency for both the trade and public.
- 3.5 To assist with the promotion and development of the Policy, a Hackney Carriage and Private Hire Consultative Forum was formed. The Forum consists of a cross-section of the trade representing self-employed drivers, operating companies, all existing hackney carriage zones and both hackney carriage and private hire licence holders. The Forum has its own Terms of Reference and a Workplan and is an effective liaison body between the trade and the Council. Some of the proposed policy amendments are a direct result of the work of the Forum.

- 3.6 A further public consultation has been undertaken with a view to adopting a new five year Policy to build on the success of the existing Policy.

4. APPROACH TO THE STATEMENT OF LICENSING POLICY

- 4.1 The development of the Statement of Licensing Policy has been based upon a consultation process undertaken by the Licensing and Enforcement Team. The policy format was originally devised having considered a range of Local Authority policies across the country, but with particular reference to our neighbouring Hertfordshire Authorities to assist in achieving more consistency across the County. The existing format has generally been successful and has been retained as the basis for the proposed Policy.

- 4.2 The consultation process was undertaken between Monday 21st June 2010 and Monday 13th September 2010. A policy consultation page was created on the Council's website including the proposed policy and an explanation of the process for making a representation.

- 4.3 Initially the consultation was due to take place between Monday 7th June 2010 and Monday 30th August 2010, however, due to a delay in publishing the information on the website the consultation was adjusted to retain a full twelve week consultation period.

- 4.4 A letter advising of the consultation process was sent to each of the following consultees:

- All existing hackney carriage and private hire licence holders (operators, drivers and vehicle proprietors)
- Hertfordshire Constabulary
- NHDC Councillors
- NHDC Area Committees
- NHDC Legal Services
- Public Libraries within North Hertfordshire
- Town Centre Managers
- Chamber of Commerce
- Neighbouring Authorities in Hertfordshire and Bedfordshire

- 4.5 It was felt that in general terms the Policy appeared to be working well, therefore, few significant changes were proposed in respect of Policy content.

- 4.6 Due to changes to Department for Transport Best Practice Guidance, as well as the development of case law, some changes to the Policy were proposed to reflect these developments.

- 4.7 Additionally, the section of the Policy dealing with the relevance of convictions was re-written to ensure greater consistency with neighbouring authorities.

- 4.8 The one significant consideration within the Policy is whether or not to continue with the existing hackney carriage operating zones of Baldock, Letchworth, Hitchin, Royston and Knebworth. As this is both a significant and complex issue, two policies were considered during the consultation as follows:

Policy A

Hackney Carriage and Private Hire Licensing Policy (retaining zones)

Policy B

Hackney Carriage and Private Hire Licensing Policy (removing zones)

Officers have made no recommendation on a preferred option but instead have presented the available evidence to the Licensing and Appeals Committee for consideration.

5. CONSIDERATIONS

5.1 As the existing policy has proved effective, much of the content remains unchanged. Minor amendments to clarify the intention of some sections have been made to remove subjectivity that has arisen during the three years that the existing policy has been in operation.

5.2 Zoning

5.2.1 Under the existing Policy, a hackney carriage is only permitted to ply for hire or park on a hackney carriage rank within the zone in which they are licensed (Baldock, Letchworth, Hitchin, Royston and Knebworth).

5.2.2 Zoning does not apply to private hire vehicles who can only undertake pre-booked journeys.

5.2.3 The existing zones are those inherited from the old Urban Councils prior to the creation of North Hertfordshire District Council. Unlike the majority of other local authorities, the Council has chosen to retain these historic zones.

5.2.4 The Best Practice Guidance issued by the Department for Transport recommends the removal of zoning. Whilst the Guidance is not statutory and referred to within the legislation, the Council must still have regard to it and have sufficient evidence/reasons for departing from it. The relevant extracts from the Guidance are as follows:

89. *The areas of some local licensing authorities are divided into two or more zones for taxi licensing purposes. Drivers may be licensed to ply for hire in one zone only. Zones may exist for historical reasons, perhaps because of local authority boundary changes.*

90. *The Department recommends the abolition of zones. That is chiefly for the benefit of the travelling public. Zoning tends to diminish the supply of taxis and the scope for customer choice - for example, if fifty taxis were licensed overall by a local authority, but with only twenty five of them entitled to ply for hire in each of two zones. It can be confusing and frustrating for people wishing to hire a taxi to find that a vehicle licensed by the relevant local authority is nonetheless unable to pick them up (unless pre-booked) because they are in the wrong part of the local authority area. Abolition of zones can also reduce costs for the local authority, for example through simpler administration and enforcement. It can also promote fuel efficiency, because taxis can pick up a passenger anywhere in the local authority area, rather than having to return empty to their licensed zone after dropping a passenger in another zone.*

91 *It should be noted that the Government has now made a Legislative Reform Order which removed the need for the Secretary of State to approve amalgamation resolutions made by local licensing authorities The Legislative Reform (Local Authority Consent Requirements)(England and Wales) Order 2008 came into force in October 2008. Although these resolutions no longer require the approval of the Secretary of State, the statutory procedure for making them – in paragraph 25 of schedule 14 to the Local Government Act 1972- remains the same.*

- 5.2.5 Attached to this Report as Appendix C are the consultation responses detailing the trade's views on zoning. Appendix C also contains the minutes of a special trade forum meeting called to discuss the zoning issue. It is anticipated that representatives from the Hackney Carriage and Private Hire Consultative Forum will attend the meeting and address the Committee.
- 5.2.6 There are three main areas of concern raised by the trade in respect of the removal of zoning. With driver recruitment already causing problems, there is concern that a new applicant would have to pass a District wide knowledge test which would add a further obstacle to recruitment. The proposal for the knowledge test, should zones be removed, would be to ask the applicant to state on their application form the town where they would ordinarily like to work and the knowledge test would concentrate primarily on that town. Should reports be received regarding a driver's lack of knowledge of certain areas of the District, further knowledge tests could be used as enforcement tools to remedy the problem. Under the current zoning system, drivers may already be asked to take a passenger from their zone to any other part of the District.
- 5.2.7 There are also concerns over the potential for drivers to migrate across the District resulting in a surplus of hackney carriages in some areas and a lack of hackney carriages in others. Whilst this may initially be the case, the law of supply and demand will lead to a natural rebalancing of the hackney carriages. As an example, it is unlikely that hackney carriages from Royston will drive to Hitchin to join already lengthy queues on the ranks instead of remaining in Royston and benefiting from their existing trade. The removal of zones is designed primarily so that hackney carriages do not have to return to their existing zone empty having travelled to another zone with a passenger.
- 5.2.8 The trade have raised concerns through the Hackney Carriage and Private Hire Consultative Forum that the current 'self-policing' of hackney carriage ranks will be lost if zones are removed. As the drivers all know each other under the current zoning arrangements, they effectively self-police the ranks and are able to identify other hackney carriages that should not be operating there, whilst maintaining accepted practices of directing passengers to the first vehicle on the rank. The trade believe that the removal of zones will make self-policing more difficult and may lead to confrontation on the ranks. Where the Committee minded to remove zoning, this issue would have to be carefully monitored by officers through additional enforcement activity.
- 5.2.9 In considering the arguments for and against retaining zones, however, the Council should also consider the potential impact on the public.
- 5.2.10 It could be argued that the current zoning system is confusing for the public who would not necessarily be aware of the zoning restrictions. If a member of the public tried to 'flag down' a hackney carriage he/she saw in the street in say Letchworth, they would not be aware of the zoning restrictions and would not understand why a non-Letchworth hackney carriage would not stop.
- 5.2.11 More importantly, hackney carriage insurance requires the hackney carriage to be used in accordance with its hackney carriage licence and the appropriate legislation. In the example in paragraph 5.2.7 above, if a non-Letchworth hackney carriage did stop and pick up the member of the public it would not be operating in accordance with its licence and so would potentially be uninsured.
- 5.2.12 A further issue for consideration, bearing in mind the Council's strategic priority of 'Green Issues' is the effect of zoning on the environment. Under the existing zoning, if a hackney carriage carried a passenger from say

Hitchin to Royston, it would then have to return to Hitchin without a passenger thus creating 'dead mileage'. If the zoning restriction was removed, the hackney carriage could then either ply for hire in Royston or park on a Royston hackney carriage rank rather than returning empty.

- 5.2.13 There are potential cost implications for the trade in removing zones. A single vehicle licence plate could be issued for the whole District rather than having to keep stocks for each of the five zones. Drivers are currently licensed to drive hackney carriages within one or more of the five zones. If a driver is licensed in say Hitchin he/she can only drive hackney carriages operating in that zone. They can add further zones if they wish, however, each additional zone incurs a further licence fee whereas a hackney carriage driver would be licensed for the whole District if zones were removed.
- 5.2.14 Historically, the Council has always operated under one policy, with one fee structure and one fare structure. As each individual zone is a District in its own right, potentially the Council may need to consider five separate fee structures, five separate fare structures and five separate policies were it to retain the existing zones as there has been some support within the trade for this approach. Whilst it may be possible to have one policy, there may be successful arguments for individual zones having their own fees and fares. Clearly there would be a financial implication in administering five separate fees and/or fare structures which would have to be passed on to the trade as part of their fees. The process of setting fares and fees is an annual process already undertaken by the Council and will continue irrespective of whether or not zoning continues.
- 5.2.15 The consultation responses in Appendix C cover in more detail the pros and cons of retaining the zones and it is for the Committee to consider all the evidence, including verbal presentations, before making their decision. In making a decision, the Committee must have regard to the stated objectives of the Policy.

5.3 Relevance of Convictions

- 5.3.1 In considering whether or not an applicant meets the 'fit and proper person' test, the Council have to consider any convictions, cautions or driving licence endorsements, including those that are spent. The Home Office have issued guidance for local authorities on how to consider such information.
- 5.3.2 The existing policy contains two separate sections dealing with the relevance of convictions, one referring to new applicants and one referring to existing applicants. Experience over the past three years have highlighted some minor inconsistencies between the two sections and further changes are suggested in order to ensure the Council continues to adequately protect the public.
- 5.3.3 One of our neighbouring authorities recently consulted on, and adopted, a new convictions policy that has since been adopted by some of the other Hertfordshire authorities. Appendix D of the proposed Policy has been based on that convictions policy but with some amendments to suit the Council's preferred stance.
- 5.3.4 Appendix D of the proposed Policy clearly states that each application will be considered on its own merits, however, gives clear and comprehensive guidance to both applicants and the public of how the Council are likely to consider any caution, conviction or driving licence endorsement.

5.4 Criminal Records Bureau (CRB) Disclosures

- 5.4.1 The Council have previously allowed an applicant to use the same CRB disclosure for a period of three years, for example three separate one year driver's licence applications providing that the applicant signs a declaration that he/she has not received any convictions, cautions or driving licence endorsements since the CRB disclosure was issued.
- 5.4.2 The Council consider that this is an unacceptable risk to the public as it could be open to abuse. It is important to state, however, that no such abuse of the system has occurred.
- 5.4.3 In order to remove this risk, the new Policy requires a current (less than three months old) CRB disclosure to be provided for each application. In the example given in paragraph 5.4.1 above, a new CRB disclosure would have to be provided with each application.

5.5 Change of Vehicle

- 5.5.1 One of the main areas of concern for existing licence holders is that the existing policy allows for a licensed vehicle to be changed mid-licence period but the new vehicle is only licensed until the end of the current licence period. This results in the vehicle licence not running in sequence with the MOT, which results in administrative concerns for both the Council and the trade.
- 5.5.2 There is no provision within the legislation for a change of vehicle as a vehicle licence is specific to a vehicle. Most local authorities, however, make provision for this by allowing a vehicle to be replaced under the guise of the surrendering of one licence and the grant of another, albeit the licence period remains the same as does the licence number.
- 5.5.3 The proposed Policy includes a 'change of vehicle policy' which allows a vehicle licence holder to change his/her vehicle mid-licence and retain the existing licence number within the confines of the legislation. The existing vehicle licence is surrendered and a new licence issued for the replacement vehicle, retaining the original licence number, but without having to meet the wheelchair accessible requirements of a brand new vehicle.
- 5.5.4 The replacement vehicle would be issued with a new twelve month licence that would then run in sequence with the MOT thus removing the current administrative concerns.
- 5.5.5 The Council is mindful of its statutory requirements in respect of equality legislation and continually monitors its wheelchair accessible vehicle (WAV) provision. The Policy continues the Council's historical requirement that all new licensed vehicles since 1st February 2003 must be wheelchair accessible. The Policy also states that a WAV can only be replaced with a WAV. The Council supply a list of telephone contact numbers for its WAV provision on the Council's website and have not received any complaints regarding the lack of WAV availability. National research has also shown that wheelchair users do not always prefer to travel in a WAV and are happy to use other licensed vehicles. The Council is therefore satisfied that allowing existing non-WAV's to be replaced without having to meet the wheelchair accessible vehicle requirements will maintain sufficient WAV provision in the District.

5.6 Vehicle Testing

- 5.6.1 An anomaly exists in the existing policy whereby it states that vehicles over five years of age must be mechanically tested every six months, however, the Policy only requires an annual MOT.
- 5.6.2 The only way of mechanically testing a vehicle is an MOT as the Engineer's Report also required by the Council is more a visual compliance test.
- 5.6.3 Vehicle owners have been providing six-monthly MOT's previously until the recent discovery of the Policy's anomaly.
- 5.6.4 The proposed policy confirms that a six-monthly MOT is required for all vehicles over five years of age to ensure that the vehicles are mechanically safe whilst transporting members of the public and undertaking high annual mileage.

6. LEGAL IMPLICATIONS

- 6.1 There is no legal requirement for a policy, it is not a statutory policy as required under the Licensing Act 2003 and Gambling Act 2005.
- 6.2 The policy ensures a transparent and consistent approach to licensing that reduces the opportunity for challenge through the Courts.
- 6.3 There is always a right of appeal through the Courts to a decision of the local authority in respect of its licensing function. However challenges to a particular decision are more likely to fail if the Council can demonstrate that it has adhered to its published policy and there is no justifiable reason to depart from it, provided of course that the underlying policy is reasonable.

7. FINANCIAL AND RISK IMPLICATIONS

- 7.1 The Council is able to set its own local fees for hackney carriage and private hire licensing which should be realistic in terms of full cost recovery of the administration and enforcement of the licensing regime within the constraints of the legislation.
- 7.2 This Hackney Carriage and Private Hire Licensing Policy will not place any new financial resource implications on the Council.
- 7.3 It is important that realistic full cost recovery is achieved and reflected in the fees charged by the Council. Regular costing exercises should be undertaken to ensure that the fees reflect this.

8. HUMAN RESOURCE AND EQUALITY IMPLICATIONS

- 8.1 This Hackney Carriage and Private Hire Licensing Policy will not place any new human resource implications on the Council.
- 8.2 The Council incorporates the statutory equalities duties which apply to all its activities into policies and services as appropriate, as set out in the Council's Corporate Equality Strategy. We also recognise that in our society, groups and individuals continue to be unfairly discriminated against and we acknowledge our responsibilities to actively promote good community relations, equality of opportunity and combat discrimination in all its forms.

9. CONSULTATION WITH EXTERNAL AND INTERNAL STAKEHOLDERS

- 9.1 The Licensing Authority have consulted with all relevant parties as listed in paragraph 4.4 of this Report.
- 9.2 The current Hackney Carriage and Private Hire Licensing Policy, as used for the consultation, is available on the Council's website. A hard copy can be forwarded on request.
- 9.3 A schedule of comments received and the action taken in respect of these comments is attached as **Appendix A of this Report**.
- 9.4 The alternative Hackney Carriage and Private Hire Licensing Policies, incorporating amendments, are attached as **Appendix B of this Report**.
- 9.5 Due to the complex nature of some of the issues, in particular the issue of zoning, full copies of the consultation responses are attached as **Appendix C of this Report**. Also attached as part of **Appendix C** is a copy of a trade meeting held on 31st March 2010 to discuss the issue of zoning.

10. RECOMMENDATIONS

- 10.1 That one of the proposed Hackney Carriage and Private Hire Licensing Policies, as attached at **Appendix B** to the Report, incorporating the results of the public consultation exercise, be supported by the Licensing and Appeals Committee.
- 10.2 That the Licensing and Appeals Committee recommend to Cabinet the adoption of a new Hackney Carriage and Private Hire Licensing Policy with effect from 7th January 2010.

11. REASONS FOR RECOMMENDATIONS

- 11.1 The existing policy is due for review and renewal as it expires on 6th January 2011.
- 11.2 A modern, effective policy will continue to ensure that the trade and the public have a document that fully explains the licensing process. It will also continue to ensure consistency of approach by officers ensuring fairness to the trade and continue to ensure the high standards currently offered by the trade are maintained.

12. ALTERNATIVE OPTIONS CONSIDERED

- 12.1 An alternative option would be a Hackney Carriage and Private Hire Licensing Policy that may differ in content and extent, based on the consultation responses.
- 12.2 An alternative option would be to continue with the existing Hackney Carriage and Private Hire Licensing Policy for a further defined period of time.

13. APPENDICES

- 13.1 Appendix A – Schedule of comments received during the consultation, including recommendations
- 13.2 Appendix B – Proposed Statement of Hackney Carriage and Private Hire Licensing Policy Options A and B

- 13.3 Appendix C – Consultation responses and a copy of the minutes of the Trade Meeting to discuss the issue of zones

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15. BACKGROUND PAPERS

- 15.1 Town Police Clauses Act 1847.
- 15.2 Local Government (Miscellaneous Provisions) Act 1976.
- 15.3 Best Practice Guidance issued by Secretary of State for Transport.
- 15.4 Statement of Hackney Carriage and Private Hire Licensing Policy 2008-11.