

Telford & Wrekin Council

Licensing Committee –2nd October 2012

Hackney Carriage Licence Conditions

Report of the Service Delivery Manager – Public Protection

1. PURPOSE

- 1.1 For Members to consider the Council's Hackney Carriage Conditions of Licence covering the types of vehicle that can be licensed as a Hackney Carriage in the Borough of Telford & Wrekin.

2. RECOMMENDATIONS

- 2.1 Having considered all relevant information, it is recommended that the Council's Hackney Carriage condition 2.2 is amended to the following –

The proprietor shall ensure that the Hackney Carriage vehicle shall only be of the type approved for Hackney Carriage use by the Council, namely a purpose-built vehicle built to carry up to eight passengers with factory fitted seatbelts and an engine capacity not less than 1600cc. subject to the following:

Hackney Carriage Vehicles are approved by way of a list that will specify as many different types of vehicles as possible.

- 2.2 Members are requested to delegate authority, to approve the designated list of vehicles, to the Principal Licensing Officer.

3. SUMMARY

- 3.1 When licensing Hackney Carriages, Telford & Wrekin Council follow the Conditions of Fitness set by the Public Carriage Office (Transport for London).
- 3.2 Recent case law has challenged the type of vehicle that is licensed by local authorities on the basis that it discriminates against wheelchair users. The case is Alma Lunt and Allied Vehicles Limited v Liverpool City Council (2009).

4. PREVIOUS MINUTES

- 4.1 LC-132 (a) - Licensing Committee 29th October 2010.
- 4.2 LC- 05(b) - Licensing Committee 7th September 2011.

5. INFORMATION

5.1 Background

- 5.1.1 Telford & Wrekin Council has responsibility for licensing Hackney Carriage and Private Hire Vehicles, Drivers and Operators within the borough of Telford & Wrekin.
- 5.1.2 The purpose of licensing Hackney Carriages and Private Hire Vehicles, Drivers and Operators is for the provision of a safe and accessible service to the public.
- 5.1.3 Section 47 (1) of the Local Government (Miscellaneous Provisions) Act 1976 [LG (MP) A 1976] allows licensing authorities to attach to the grant of Hackney Carriage licences conditions that it considers reasonably necessary.
- 5.1.4 Telford & Wrekin Council has traditionally, in accordance with the above, attached conditions to Hackney Carriage and Private Hire Licences.
- 5.1.5 On 8th March 2011 the Council's Licensing Service commenced a twelve week consultation on the condition of licence relating to the types of vehicles licensed as Hackney Carriages in the Borough of Telford & Wrekin. The consultation letter, website page and list of consultees are attached at Appendix A.
- 5.1.6 Members of the Council's Licensing Committee met on 7th September 2011 to consider the existing and proposed conditions of licence in light of responses received from the Consultees. The consultation responses are attached at Appendix B. Members resolved to maintain the existing condition which states:

The proprietor shall ensure that the Hackney Carriage shall only be of the type approved for public hire used by the Commissioner of Police of the London Metropolitan area, namely a purpose built vehicle designed to carry up to seven passengers ...

A copy of Telford & Wrekin's Hackney Carriage Licence Conditions is attached at Appendix C.

- 5.1.7 In December 2011 the Licensing Service commenced a 12 week consultation on the Council's Draft Hackney Carriage and Private Hire Policy. A response was received from Allied Vehicles Ltd. However, this related to the Council's conditions of licence (attached as an appendix to the Policy) rather than the Policy itself, which was the

subject of the consultation. In light of a letter of representation received from Bindmans LLP, on behalf of Allied Vehicles Ltd, (this related to the type of vehicle which this Council will licence as a Hackney Carriage), the matter has now been brought before Members for further consideration. The letters from Allied Vehicles and Bindmans are attached at Appendix D.

- 5.1.8 The Principal Licensing Officer has contacted the consultees, who responded to last year's consultation on the Hackney Carriage condition relating to the type of vehicle this Council will licence, to inform them that the Council is again reviewing condition 2.2 of the Council's conditions of licence for Hackney Carriages. A copy of the letter is attached at Appendix E with comments received attached at Appendix H. Further representations are attached at Appendix I.
- 5.1.9 In 2009 the case of *The Queen on the Application of (1) Alma Lunt (2) Allied Vehicles Ltd v Liverpool City Council*, the Court found that Liverpool City Council had incorrectly considered that its Hackney Carriage fleet were 'wheelchair accessible' and that the Authority had failed to consider wheelchair users who had wheelchairs larger than the 'reference' wheelchair. Their decision to refuse to licence an E7 Eurocab was quashed on appeal and returned to the Council for re-determining.
- 5.1.10 Members are asked to consider the term 'wheelchair accessible'. Guidelines state that a vehicle is 'wheelchair accessible' if a wheelchair of a certain size and weight can be carried by the vehicle (referred to as a reference wheelchair). However, it does not cater for an increasing number of wheelchairs which are longer, higher, wider or heavier than the specification.
- 5.1.11 Section 149 of the Equality Act 2012 sets out Public Sector Equality Duty. A copy of the Department Transport's Guidance to Licence Authorities on the Equality Act is attached at Appendix F.
- 5.1.12 A Licensing Authority must have due regard to the needs of passengers who have wheelchairs that do not fit within the 'reference' wheelchair.
- 5.1.13 Where a policy requirement prohibits the licensing of a vehicle capable of meeting this need, the relevant Authority must show that they have paid due regard to this need and reflect this in their decision to adopt such a policy.
- 5.1.14 The 'reference' (new manual) wheelchair has standard dimensions, set by the Department for Transport. They are:

Height - 1,350mm

Length - 1,200mm

Width - 700mm

Weight (including occupant) - less than or equal to 300kg

- 5.1.15 There are an increasing number of wheelchairs in service which are outside of these requirements. Currently all types of electric and power assisted wheelchair are too heavy to be considered as reference wheelchairs and so are not considered in 'wheelchair accessible' surveys. Any standard bariatric wheelchair will also be outside of the accessible terms due to weight.
- 5.1.16 Members should also consider matters relating to restraint safety. The London Taxi International and Reliant Metrocab Hackney Carriage vehicles licenced in Telford & Wrekin have restraints that cater for rear facing wheelchair passengers and this is the only method of carriage available in these vehicles. There is an approved method of securing both the wheelchair and passenger when secured rear facing. However there is a level of risk where the wheelchair does not rest against the partition bulkhead. The Mercedes Vito vehicle licensed by Telford & Wrekin Council can be fitted to carry wheel chair passengers front and rear facing.
- 5.1.17 Furthermore, with a rearward facing wheelchair in a frontal impact, the restraint offers only offers protection against recoil, it does not protect against the initial impact.
- 5.1.18 An Authority must also consider Article 28 of the EC Treaty when making such a policy. This Article prohibits measures of equivalent effect to quantitative restriction on imports.
- 5.1.19 There are now several types of purpose built vehicles on the market, built by various manufacturers and which are commonly known as "Eurocabs". A number of Eurocab vehicles cater for forward facing wheelchairs. A number of vehicles also offer adjustable restraint tracks. Forward facing restraints will offer more protection against frontal impacts.
- 5.1.20 Additionally, design improvements in vehicle types are now catering for increased accessibility measures. These measures include electric ramps, electric retractable seats, adjustable floors, etc. These are not currently available in Telford & Wrekin's licensed hackney fleet.
- 5.1.21 It is proposed that the vehicle types should follow an approved list (a designated list), decided on a case by case basis in consultation by the Licensing Service with a working group consisting of the trade and service users, including those who are ambulant disabled, wheel chair users and those who have impaired vision.

5.1.22 This will allow the trade to put forward vehicles of choice that meet the criteria. In addition this will provide greater flexibility for new types of wheelchair accessible vehicles.

5.1.23 It is proposed that all applications, from proprietors who wish to licence a purpose built vehicle, will be considered by the Principal Licensing Officer after consultation on the vehicle type with the Working Group. The proposed vehicle must meet the Councils' conditions of licence 2.1 to 2.10 inclusive. Vehicles would only be added to the list after careful consideration of their suitability as a wheel chair accessible vehicle for use on taxi ranks.

5.1.24 This would bring consistency to the Hackney Carriage conditions and Private Hire Vehicle conditions of licence. A similar condition of licence for Private Hire Vehicles has been in place since 1st December 2009. Since this condition was implemented, applications for vehicles to be added to the list of approved vehicles have been received on a regular basis by the Principal Licensing Officer and consultation with a Working Group, to consider vehicle types as to their suitability for Private Hire use, has proved to work well.

5.2 Equal Opportunities

5.2.1 A Community Impact Assessment has been carried out on the proposed condition relating to the type of vehicles licensed as a Hackney Carriage by Telford & Wrekin Council and is attached at Appendix G.

5.3 Environmental Impact

5.3.1 There is no environmental impact arising from this report.

5.4 Legal Comment

5.4.1 Section 47(1) of the Local Government (Miscellaneous Provisions) Act 1976 allows the council to attach to the grant of hackney carriage licences such conditions as it may consider reasonably necessary.

5.4.2 Section 149 (1) of the Equality Act 2010 states that a public authority must have due regard to the need to

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is a prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share protected characteristic and persons who do not share it.

Section 149 (4) of the Equality Act 2010 states that the steps involved

in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

5.4.3 The Queen on the Application of (1) Alma Lunt (2) Allied Vehicles Ltd v Liverpool City Council 2009 should be considered in relation to the wheelchair accessibility.

5.4.4 The current condition states that Hackney Carriages shall only be of the type approved for public hire used by the Commissioner of Police of the London Metropolitan area, namely a purpose built vehicle designed to carry up to seven passengers... Should there be application in respect of any other type of vehicle the application would have to be heard by the Licensing Committee at a hearing arranged specifically for this matter to be determined.

5.5 Links with Corporate Priorities

5.5.1 This report has links to:

1. Creating a safer community

(b) Safeguard health and safety of the community

5.6 Opportunities and Risks

5.6.1 In proposing this action the Corporate Risk Management Methodology has been complied with. This approach is not intended to eliminate risks but to identify the risks and manage them. However not all risks can be managed all of the time and some risks may not have been identified.

5.6.2 The following key risks and opportunities associated with this action have been identified and assessed and arrangements will be put in place to manage them.

(i) The Council being unable to successfully defend an Appeal to the Magistrates Court as well as (and after) to the Crown Court and the financial risks of the costs of an Appeal.

5.7 Financial Implications

5.7.1 License fees for Hackney Carriages contribute to meeting the overall income budget of £353k for licensing. There are no direct financial implications arising from amending the Council's Hackney Carriage condition 2.2. MLB 20.08.12

6. WARD IMPLICATIONS

6.1.1 This report has implications for all wards in the District.

7. BACKGROUND PAPERS

7.1.1 Town Police Clauses Act 1847

7.1.2 Local Government (Miscellaneous Provisions) Act 1976

7.1.3 Human Rights Act 1998.

7.1.4 Road Traffic Act 1988

7.1.5 Public Service Vehicle Accessibility Regulations 2000

7.1.6 Equality Act 2010

7.1.7 Department for Transport's Guidance to Local Authorities on the Equality Act 2010.

7.1.8 Road Vehicle (Construction and Use) Regulations 2003

7.1.9 Telford & Wrekin Council's Conditions of Licence for Hackney Carriages.

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