

PART A

Report to: Licensing Committee
Date of meeting: 23 November 2015
Report of: Head of Community and Customer Services
Title: Review of Hackney Carriage Vehicle Limitation Policy

1.0 SUMMARY

- 1.1 The Council is responsible for licensing hackney carriages in the interests of public safety to ply for hire within the Borough and carry passengers for hire. The Council currently exercises its discretion to limit the number of licences for hackney carriage vehicles that are granted. This paper reviews that policy to allow the Committee to decide whether it ought to be continued.

2.0 RECOMMENDATIONS

- 2.1 That the current policy be continued of
- (1) restricting the number of hackney carriage vehicle licences that are granted to 305 licences, subject to
 - (i) any licences that are surrendered or revoked (other than for administrative reasons) not being re-issued and
 - (ii) the Head of Customer and Community Services in consultation with the Chair of the Licensing Committee determining any individual applications for hackney carriage vehicle licences appearing on its merits to be outside of the policy of granting new licences.
- 2.2 That officers report on the policy to the Licensing Committee every two years in the absence of any survey of significant unmet demand or significant legislative change.

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Report approved by: Alan Gough, Head of Community & Customer Services

3.0 **DETAILED PROPOSAL**

3.1 **Legal basis to powers**

The council has powers under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 to grant (and suspend or revoke) licences for vehicles to ply for hire within the Borough and to carry passengers for hire and reward. The council has a broad discretion in setting the standards and conditions in order to obtain and keep a licence.

3.2 The council also grants licences for hackney carriage drivers and for private hire operators, vehicles and drivers.

3.3 The council has a discretionary power under section 16 of the Transport Act 1985 to limit the number of hackney carriage vehicle licences (HCVLs) where it appears there is no significant unmet demand (SUD) for hackney carriages.

3.4 The Court of Appeal has held¹ that section 16 works in the following way:

- (a) the local authority must be satisfied there is no significant demand for taxi services that is unmet within its area before applications for vehicle licences can be refused. Demand for existing taxi services and those fulfilled by other means may be considered, and demands across the whole borough can be taken into account;
- (b) the local authority has a discretion (not a duty) to refuse to grant further applications if it is satisfied there is no SUD;
- (c) if the local authority are not so satisfied, they cannot refuse to grant a licence in order to limit the number of hackney carriages and must grant applications.

3.5 SUD is typically defined as when passengers have to wait for a hackney carriage at a taxi rank for more than 10 minutes. SUD within an area is typically assessed by means of independent triennial surveys conducted on behalf of the local authority.

3.6 The power under section 16 only applies to HCVLs, and not to the other licences mentioned above.

3.7 **Policy history**

The council's current policy is to limit the number of HCVLs, although additional licences may be granted by the Head of Community and Customer Services in consultation with the Chair of the Licensing Committee where there is a genuine exception to the policy – for example, an applicant who proposes providing a different service or type of vehicle than currently being provided. The policy is on a reducing basis, in that any licences that are surrendered or revoked (other than for administrative reasons) are not re-granted at a later date.

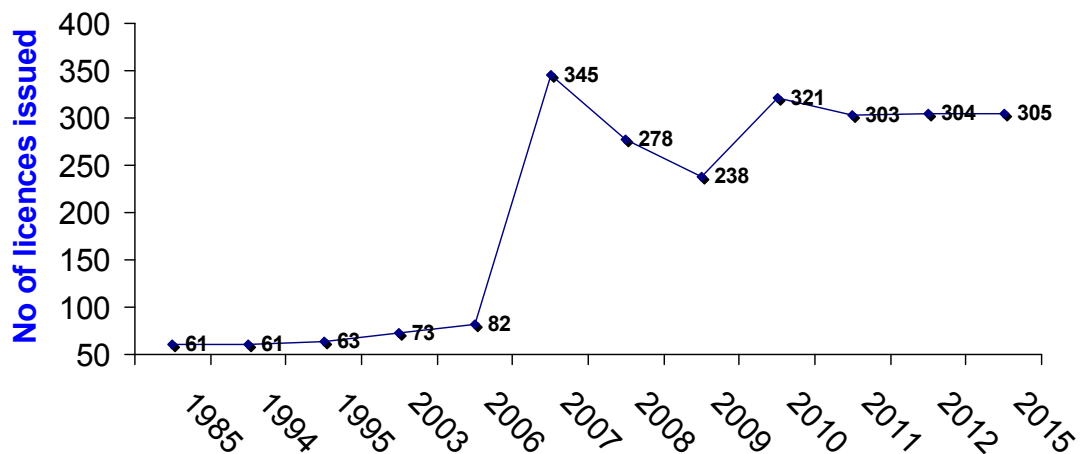
3.8 The chronology below illustrates how the current policy has evolved over the past thirty years:

¹ R (on the application of Maud) v Castle Point Borough Council [2002] EWCA Civ 1526

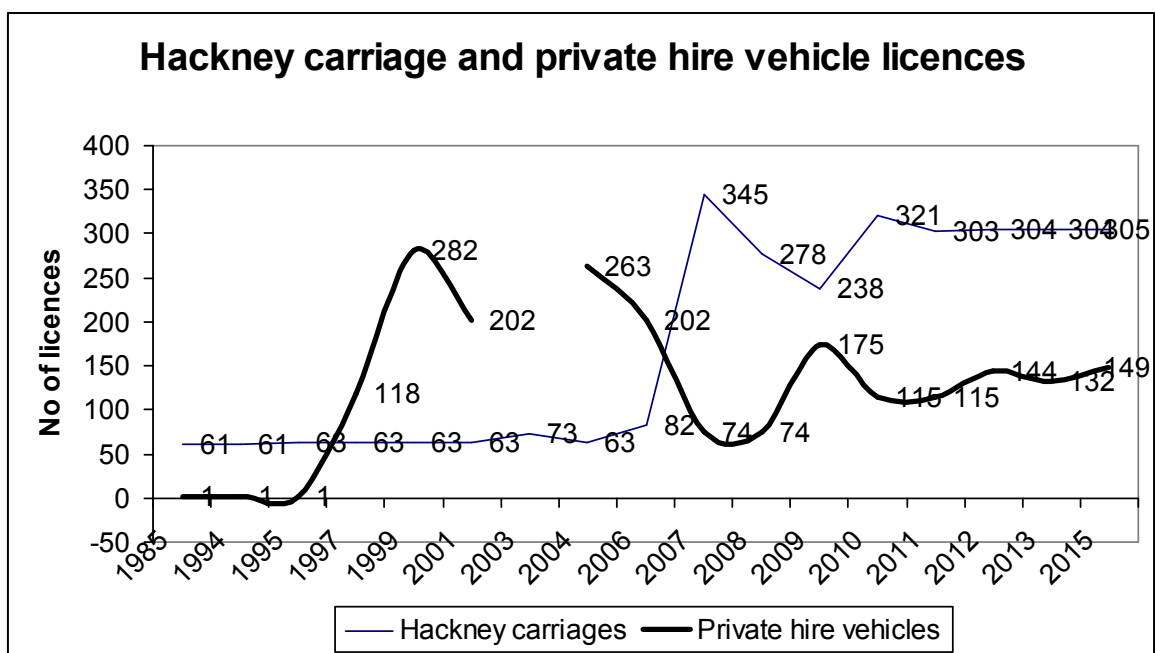
1985	First limits believed to be imposed of 65 HCVLs following introduction of Transport Act 1985
1988	First survey of “peak demand” conducted by local college
1995	Additional two HCVLs granted specifically for wheelchair-accessible (London-style) taxis
2001	Survey identified SUD and also <i>inappropriately met demand</i> (that is, services being met by unlicensed vehicles, those licensed by other councils, and by private hire vehicles). Recommended a taxi quality partnership to explore issuing further HCVLs to address the difference
2003	Limited growth policy introduced of ten new licences (making a total of 73 HCVLs). Managed growth policy of 12 additional HCVLs over following two years proposed but not implemented
2005	Consultation conducted on removing limit following appeal to Crown Court by 73 private hire vehicle owners, and changes to services implemented at Watford Junction
2006	Licensing Committee resolved to remove HCVL limit
2010	Delimited policy confirmed to stay in force by Licensing Committee
2011	Further SUD policy commissioned and conducted
2012	Limitation policy imposed and capped at 304 HCVLs (the number in force at the date of the decision)
2015	One additional HCVL granted to enable an electric HCV to be licensed on a trial basis Policy review and report to Licensing Committee

3.9 The chart below demonstrates the numbers of HCVLs granted:

Hackney carriage numbers since 1985



- 3.10 The chart below compares the approximate numbers of private hire vehicles to hackney carriages, although numbers prior to 1995 are not available and are represented as zero, nor are the figures for 2003:



- 3.11 The 2011 SUD study (which was considered by the Committee on 19 March 2012) concluded that:

- (a) there was no evidence of any SUD;
- (b) there appeared to be a large over-supply of HCVs
- (c) there is demand for formal taxi ranks in the High Street
- (d) there is an urgent need to resolve over-ranking issues in the High Street and around Watford Junction station

- (e) recent trade requests for policy changes by the council had encouraged increased vehicle numbers while passenger demand was reducing
- (f) customer service had reduced whilst drivers focused on making a living
- (g) public and corporate support for licensed vehicle services was being lost
- (h) there appeared to a third more vehicles than was actually required taking into account the fleet size, average distances, population to vehicle ratio etc.

3.12 **Policy for Watford**

Officers do not believe that the evidence base justifying the policy decision in 2011 has significantly changed to the extent that a change in policy is now warranted. In particular, the Committee might wish to take into account

- (a) the lack of complaints about non-availability of taxis at any time in any part of the Borough, which was a feature prior to 2011;
- (b) that the number of HCVLs has not reduced in any way and that the number of private hire vehicles has increased but has now stabilised. Perhaps equally significant is that the number of enquiries about applying for HCVLs over the past three years is, in officers' experience, considerably less than in previous years;
- (b) the numerous complaints made about the over-supply of taxis at locations such as Shady Lane, Clarendon Road, Watford Junction, and the High Street;
- (c) the continuing demand for more taxi ranks in the High Street and town centre;
- (d) customer service is still a matter of concern, as evidenced in the disabilities mystery shopping exercise recently reported to the Committee.

3.13 It is now quite established that an independent survey is required to justify the existence of SUD and consequently the refusal of applications for more HCVLs. Surveys can typically take at least three to four months to commission and complete at a cost of at least £15,000 (for which there is no identified budget) although this is dependent on the specification set out.

3.14 Officers do not believe the situation on the ground has changed significantly since the last survey from the consumer's point of view. There has been an increase in PHVLs, and some of those applicants may indeed be people who would have liked an HCVL if the opportunity were available to do so. However it is reasonable to conclude that passengers at taxi ranks are being provided with a good supply of taxis (characterised by the lack of complaints about availability) and that is the real test.

3.15 It is also reasonable to assume that the increase in PHVs ensures that private hire bookings can be adequately fulfilled (again evidenced by the lack of complaints about waiting times or non-availability of PHVs). Although this is irrelevant in one sense to the issue of SUD, the Committee needs to be satisfied that any latent demand (or demand picked up by non-hackney carriages) is taken into account. The increase in Watford follows a national increase of 17.5% in PHV-only drivers since 2013, although there has also been a decline in HCV-only licences nationally of 1.3%² which may

represent a shift away from hailing at ranks in favour of bookings via smartphone apps and new technology.

3.16 **Government policy**

It is up to each local authority to decide its own policy, and current government advice is set out in the Department for Transport's Best Practice Guide (2010)³ and the relevant aspects are summarised below:

- (a) the government recommends the best course is for a delimited market;
- (b) the issue should be approached from the point of view of the consumer, and what the benefits or disadvantages would be to them of having controls on the numbers of licences;
- (c) where limits are in place, surveys should ideally take place triennially;
- (d) the hackney carriage trade should not pay for SUD surveys in order to maintain its impartiality.

3.17 The Best Practice Guide is currently being revised. The Law Commission, in its' separate report on taxi and private hire licensing⁴, has suggested that the right of local authorities to impose quantity restrictions should be maintained in any future reform legislation, contrary to the view of the previous Labour government.

3.18 Response to current Best Practice Guide

The relevant part of the Guide is reproduced at the appendix, including responses to the questions posed at annex A. In response to the specific questions that are asked, the Committee is invited to consider the following:

(1) the best course is for a delimited market

Watford experienced a delimited market between 2006 and 2012, during which time the number of HCVs increased from 82 to 304 and the number of PHVs dropped significantly over that period before climbing to more than before the limit was removed. Extreme pressure on ranks and other kerb-side space has resulted since, with significant officer time and resources devoted to identifying a sustainable solution although there is no duty to provide any ranks at all.

Maximum taxi fares within the Borough are regulated by the council and whilst drivers can choose to charge less than the tariff, officers are not aware of this being common practice or used as a marketing tool and so increased competition does not affect the price of the service at a purely local level; nor are officers aware of significant competition between HCVL owners over unregulated fares being provided to out-of-the-Borough destinations.

The council can take account of the commercial impact of removing the limit, although the courts have held that commercial implications cannot be the only reason to be

² National Taxi Statistics, (Department for Transport, 2015)

³ Taxi and Private Hire Vehicle Licensing: Best Practise Guidance (Department for Transport, 2010)
<https://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance>

⁴ Taxi and Private Hire Services, (Law Commission, 2015)
http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc347_taxi-and-private-hire-services.pdf

taken into account⁵. A restricted market clearly has advantages for those who already hold licences, and a clearly saturated market locally is highly unlikely to benefit from even more competition.

(2) the issue should be approached by considering the advantages and disadvantages from the consumer's point of view

Historically, before delimitation occurred in 2006, officers would receive complaints about a lack of HCVs, particularly on Fridays, from Rickmansworth Road rank late at night, and during certain religious and holiday periods throughout the year and it was clear that demand at that point exceeded supply. It has been some considerable time since similar complaints have been made, and officers are confident supply now exceeds demand throughout the majority of the week and from the majority of locations. Few complaints are made about inappropriately met demand either, such as PHVs being used instead of HCVs, or unlicensed and/or out-of-Borough vehicles being hired instead. The safety and supply for consumers who wish to use HCVs is adequately catered for in officers' judgement.

It may be that, when the major infrastructure projects in the Borough are completed over the coming years an argument will be made out then for more HCVLs to be granted.

(3) where limits are in place, surveys should ideally take place triennially

There is no hard-and-fast rule requiring this, and there are financial implications of around £15,000 and resource implications in commissioning a survey at this moment in time. Conversely, there are also potential risks in defending appeals (to the crown court) against the refusal to grant an HCVL should an application be made.

(4) the hackney carriage trade should not pay for SUD surveys in order to maintain its impartiality

Officers would concur that the trade should not directly contribute to a survey, but see no reason why they ought not contribute to the cost of future surveys where an element for this is legitimately added to the general licence fee to aid with the administration of the HCVL regime. The previous survey was paid from the LAGBI Fund and a proposal to add a licence fee supplement for future SUD surveys has not been implemented.

3.19 Regulators' Code

In determining any general policy of principles the council is required to take into account and give due regard to the Regulators' Code, issued under the Legislative and Regulatory Reform Act 2006, which came into force in April 2014. The predecessor to the Code (the Regulators' Compliance Code) was considered when the current policy was implemented.

3.20 The Code does not need to be taken into account if the council properly concludes that the provision is not relevant or outweighed by another relevant provision which is reasoned and based on material evidence.

3.21 The relevant Code test that might be said to apply is set out below with officers' comments:

⁵ *R v Council of the City and District of St Albans (2000) QBD 2000 WL 558* and *R (on the application of Nemeth) v West Berkshire District Council (2000) WL 3312*

Regulators should carry out their activities in a way that supports those they regulate to comply and grow

1.1 Regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.

1.2 When designing and reviewing policies, operational procedures and practices, regulators should consider how they might support or enable economic growth for compliant businesses and other regulated entities, for example, by considering how they can best:

- understand and minimise negative economic impacts of their regulatory activities
- minimising the costs of compliance for those they regulate
- improve confidence in compliance for those they regulate, by providing greater certainty; and
- encourage and promote compliance.

Comment:

This report is not proposing to impose any further regulatory burdens in simply maintaining an existing policy although it is conceivably a regulatory burden prohibiting others from entering the trade in Watford. However, it is considered to be a proportionate (and ultimately legal) response when taking into account the other relevant factors outlined in the report.

- 3.22 The Committee may decide that, in terms of risk and potential challenge, a survey ought to be commissioned to be entirely satisfied that there is currently no SUD. Alternatively, against the background of a review of the DfT Best Practice Guide and the (admittedly faint) prospect of new legislation being introduced by the government, the Committee may decide to maintain a watching brief at present and for officers to report back at 18-month intervals on the situation at hand, or clearly sooner if there is a pressing need to do so.
- 3.23 The officers' view has been informally agreed with by the author of the last SUD study, who has conducted 100 studies nationally, and who has been able to reacquaint himself earlier this year with the local picture whilst advising on the disabilities mystery shopping exercise.

4.0 IMPLICATIONS

4.1 Financial

- 4.1.1 The Shared Director of Finance comments that there is no reserved budget for conducting SUD reviews. Although it would be legal for hackney carriage licence holders to contribute through their licence fees, this would equate to around £50 for each HCVL owner. The committee may decide to add a "premium" of around £16 per HCVL over each of the next three years to contribute towards a possible SUD survey in 2019 – 2020.

4.2 Legal Issues (Monitoring Officer)

- 4.2.1 The Head of Democracy and Governance comments that there is no legal duty to conduct a SUD study or the prescribed form it should take although the courts have indicated several matters should routinely be considered within them. The study is the evidence that would be used by the council, if challenged in court, to justify why it refused to grant an HCVL on the grounds there was no significant unmet demand. Whilst the council needs to take into account various factors if deciding whether to impose or remove a limit, those are not relevant in order to maintain an existing policy. It is acceptable to defer making a decision whether to grant an application for a new HCVL in order to first undertake a survey if necessary⁶.

4.3 Potential Risks

Potential Risk	Likelihood	Impact	Overall score
Application for new HCVL <i>within</i> the current policy	1	2	2
Appeal against refusal of HCVL within current policy	1	2	2
Application for new HCVL outside the current policy	1	1	1
Appeal against refusal of new HCVL outside of current policy	1	2	2
New legislation changing policy within 18 months	1	1	1
<i>Those risks scoring 9 or above are considered significant and will need specific attention in project management. They will also be added to the service's Risk Register.</i>			

Appendices

None

Background Papers

As identified in the footnotes

File Reference

HCVL delimitation review

⁶ R v Middlesbororough Council, ex parte IJH Cameron (Holdings) Ltd [1992] COD 247.