

PART A

Report to: Licensing Committee
Date of meeting: 29 June 2011
Report of: Head of Environmental Services
Title: Hackney carriage vehicle licence numbers

1.0 SUMMARY

1.1 The Council has a power to restrict the number of hackney carriage vehicle licences it grants where it is satisfied there is no significant unmet demand for taxi services. After reviewing the policy of no quantity restrictions last year the Committee asked for an update in twelve months during which time the number of vehicle licences granted by the council increased in 2010 to 321. The Watford Hackney Carriage Drivers Association have also asked for this issue to be considered by the Committee and have made a submission shown in Appendix 1.

2.0 RECOMMENDATIONS

2.1 That the Committee considers the contents of this report and determines if the current Council policy of no quantity restriction on hackney carriage vehicle numbers is reviewed.

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Report approved by: Alan Gough, Head of Environmental Services

3.0 DETAILED PROPOSAL

3.1 In October 2006 the Council exercised its powers under the Transport Act 1985, when a decision was taken to remove the limit on the number of licences issued, sometimes referred to as delimitation. The Council has the power to limit the number of hackney carriage vehicle licences (HCVLs) that it issues within the Borough under this Act subject to satisfying itself that having set the limit there is no significant unmet demand for hackney carriage services. The usual manner in which to gauge whether or not there is an unmet demand for licences is by way of regular independent survey. The test is the demand for

hackney carriages by passengers, and not a demand for licences by prospective licensees.

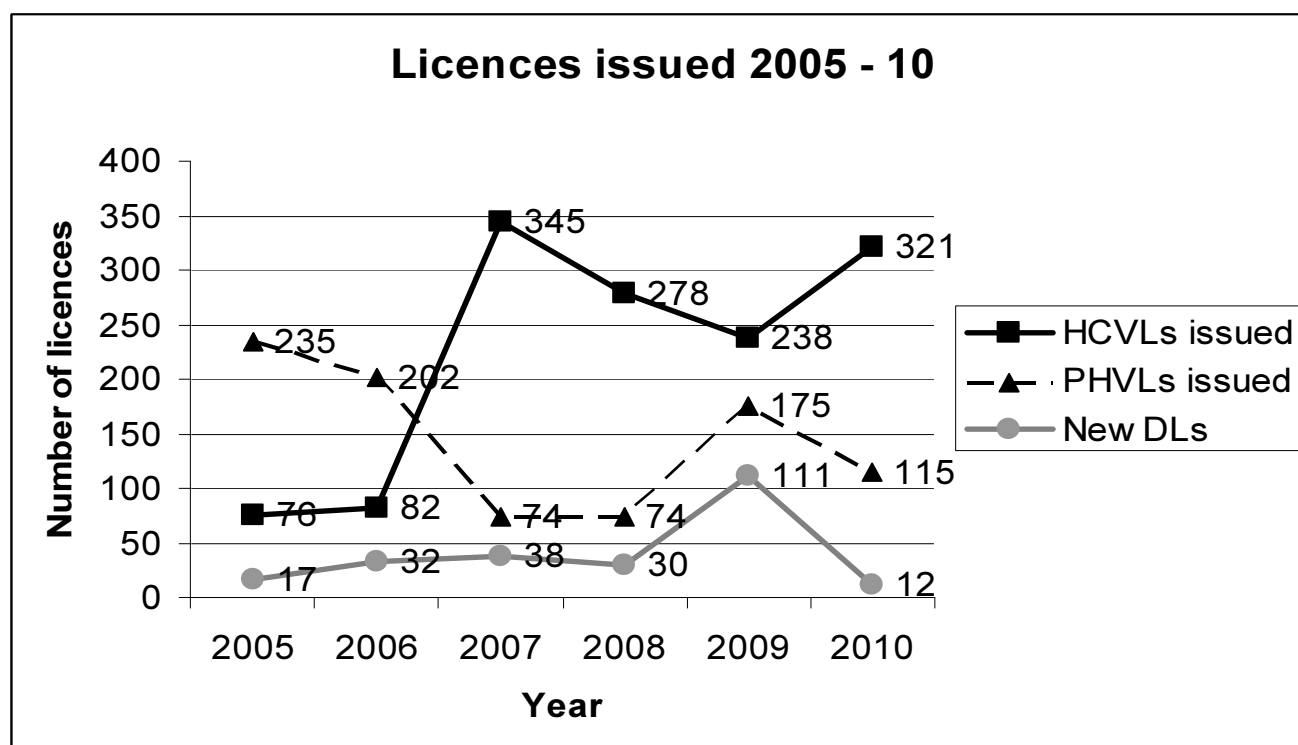
- 3.2 Any person aggrieved by the refusal of the Council to grant a licence may appeal to the Crown Court. The Court may order the Council to grant the licence if it finds there is evidence of demand.
- 3.3 For many years, the Council adopted a policy of restricting the number of licences it issued. Until 1995, this stood at 61 licences, when it was increased by two wheelchair-accessible London-style vehicles with the agreement of the hackney carriage trade.
- 3.4 Following an unmet demand survey in 2001, a policy of managed growth was adopted on 10 March 2003, resulting in an additional ten licences being issued in 2003 – 2004. After a further survey in 2006, the Licensing Committee agreed in October that year to remove any further restrictions on the number of vehicle licences.
- 3.5 There are a number of factors that relate to the number of hackney carriages. Whilst some of these were present before 2006, the scale and intensity of some has grown with the increase in the number of licensed vehicles. These factors include:
- (1) over-ranking, particularly at the Rickmansworth Road rank in the absence of marshalling, and at Clarendon Road
 - (2) inappropriate ranking, particularly in Westland Road and in the High Street. These first two factors cause annoyance and inconvenience to residents and other motorists, and require significant enforcement resources
 - (3) the demands of Watford Junction, particularly decisions by the train operating companies concerning the issue of permits for taxis to ply from the station forecourt
 - (4) the level of illegal plying for hire, which has declined since delimitation
 - (5) a failure on the part of some drivers who converted directly from being a private hire driver to becoming a hackney carriage driver of the additional duties placed on them when plying for hire, such as not unreasonably refusing to carry passengers and the manner in which fares are regulated
 - (6) the cost of licence plates if sold within a limited market, which the council is legally unable to prevent or control
 - (7) demand for services generally has several peaks during the week, particularly Monday, Friday and Saturday nights
 - (8) the general economic situation. The recession has had an impact on drivers in terms of their operating costs significantly rising (especially fuel and insurance) whilst the number of taxi journeys appears to be declining

(9) an impact on the number of private hire vehicle licences.

3.6 Vehicle numbers

The table and charts below show the hackney carriage vehicle licences (HCVLs) and private hire vehicle licences (PHVLs) issued by the Council, and which were surrendered and transferred each calendar year between 2005 and 2010. There are around 450 valid driver licences (DLs) currently issued. The spikes in 2009 represent drivers who were formerly licensed by other councils within Watford and who were required to be licensed by Watford Borough Council.

Calendar year	Hackney carriage vehicle licences issued	Hackney carriage vehicle licences transferred ¹	Hackney carriage vehicle licences surrendered ²	Private hire vehicle licences issued	Private hire vehicle licences transferred ³	Total vehicles licensed
2005	76	11 (14%)	1	235	0 (0%)	311
2006 ⁴	82	26 (31.70%)	31	202	84 (41.58%)	284
2007	345	35 (10.14%)	7	74	16 (21.62%)	419
2008	278	33 (11.%)	51	74	37 (50%)	352
2009	238	55 (23.11%)	60	175	36 (20.57%)	413
2010	321	32 (9.96%)	23	115	27 (23.48%)	436



¹ Licences are typically transferred because the owner has sold the vehicle to another owner.

² Licences may be surrendered for another reason, including the “de-licensing” of a particular vehicle in order that a new vehicle may be licensed.

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⁴ Year that delimitation occurred.

3.7 At the time of removing the limit in 2006, officers predicted the overall number of licensed vehicles would not rise higher than about 280. Although this number has clearly been exceeded, the recessionary effects on the market were at the time wholly unanticipated and of course it is unclear what the future will hold.

3.8 A new limit can only be imposed if a survey finds that there is no significant demand for taxi services. This has to be looked at across the context of the whole of the week and the whole of the Borough. Even if a survey does find there is no significant unmet demand, and so a limit on number can be set, there would still be two possible circumstances in which licences would still be need to be considered: (1) where an application is made to provide services of a type that is not currently provided within the Borough; and (2) to allow the licensing of wheel-chair accessible taxis if the relevant provisions of the Equalities Act 2010 are introduced by the coalition Government.

3.9 **Unmet demand surveys**

There is a substantial body of case law dealing with unmet demand surveys. The courts have come to expect surveys to be conducted by a handful of independent consultants that have become expert in their execution. Surveys typically take place over at least a week-long period, and can either be purely quantitative in terms of measuring demand for taxi surveys, or can be qualitative by also seeking views of users and others. Surveys quite often have to be timed to ensure that they take place at times of “normal” taxi use that are not distorted by factors such as school holidays or hot weather when comparatively fewer people might take taxis in Watford etc. Although officers have not sought estimates at this stage, it is anticipated that a survey would cost around £15,000 which would be drawn from the LAGBI Reserve. It would also be prudent to earmark resources for any additional legal challenge – for example, for an appeal to the crown court against the refusal to grant a licence based on the evidence provided by a survey. Like all areas of administrative council decision-making, there would be the possibility of a decision being liable to being judicial reviewed.

3.10 Further regular surveys

To implement and maintain a limitation policy, the Council will need sufficiently robust evidence on a regular basis to refuse future applications. Best practice suggest that this would entail commissioning regular surveys, commonly on a two to three year cycle. (Members will be aware that there is no need for a survey to adopt or maintain a policy of unrestricted numbers). Each survey contains a risk of a legal challenge.

3.11 Government policy

The new Government has not published any policy on this area. The previous Government’s policy

was one which preferred delimitation on the grounds that it offered more choice to consumers and that councils should publicly justify why they have imposed limits only where there are clear benefits to consumers. This position was also supported by Local Government Regulation (formerly LACORS). The report to the Committee on 16 October 2006 sets out that position more clearly. The Best Practice Guide published by the Department for Transport in March 2010 states:

47. 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 a deterioration in the amount or quality of taxi service provision?

48. 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.

49. 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.

50. 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.

51. 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 Local Transport Plan process. A recommended list of questions for local authorities to address when considering quantity controls was attached to the Department's letter. (The questions are listed in Annex A to the Guidance)."

3.12 Members may be aware that the Transport Select Committee recently conducted an inquiry into taxi and private hire legislation. Delimitation was not within the main remit of its enquiry although its expected report may comment on this subject.

3.13 Nationally, it is reported⁵ that as of 1 May 2011 only 85 local authorities in England restrict hackney carriage numbers, and that 258 (or about 75%) do not have restrictions or will be removing them in due course. Just over 70 authorities have removed or given firm commitments to remove restrictions since the Office of Fair Trading report in delimitation in 2004. Appendix 2 shows the current situation in neighbouring authorities with regard to the issue of quantity restriction.

3.14 Other strategies

Restricting licences through the use of the power in the Transport Act is only one way of restricting growth. The Council can also use entry qualifications for drivers, and quality standards for vehicles as disincentives to new applicants seeking licences, or to seek to reduce existing licence-holders. However, there is a danger that this would lead to an exodus of licensed vehicles to other districts but whose drivers would still seek work in the Borough. Some of those could include:

- (1) extending the livery and signage requirements on licensed vehicles
- (2) requiring all vehicles licensed for the first time to be brand-new
- (3) requiring all new drivers to undertake the national vocational qualification for licensed drivers

⁵ <http://www.taxi-driver.co.uk/?p=1601> (viewed 11.05.11).

within a certain time period after being granted their licence

(4) requiring all existing drivers to obtain the national vocational qualification (as opposed to the voluntary basis now adopted)

(5) requiring drivers to take the Driving Standards Agency assessment on a more regular basis than the current 10 yearly cycle

(6) making it easier to revoke the licences of those drivers who fail to meet required standards, for example through a re-examination of the penalty points scheme;

(7) insisting on crime prevention and other measures to be installed in vehicles, such as safety screens or meters that print receipts.

3.15 The recession appears to have had an impact on the issues outlined in this report, and which in turn may impact on drivers' earning abilities. There is an often quoted ratio of hackney carriages to per 1,000 head of population, with 1.1 being the national average. In Watford, for 2010, this ratio would be 3.7

3.16 The Committee will be aware that no limits can be placed on the number of hackney carriage driver, private hire vehicle or private hire driver licences.

3.17 Should the Committee determine that the existing policy should be reviewed then the Licensing team will need to conduct proper and meaningful consultation with all interested parties, such as customers, hackney carriage drivers etc, as well as commissioning an unmet demand survey and then reporting back to Committee later this year. The timing of this would be dependant upon the availability of appropriate consultants to undertake the unmet demand survey.

Should the Committee determine that the existing policy should not be reviewed then consultation and a survey etc will not be needed.

4.0 **IMPLICATIONS**

4.1 **Financial**

4.1.1 Should the Committee determine that the policy should be reviewed then there will be a need to undertake an unmet demand survey. There is no revenue budget currently identified to conduct a survey in this financial year (e.g, the need to re-conduct surveys) and only a small budget of £2,000 exists for consequential costs, notably for legal fees. A maximum of £15,000 could be utilised from the Local Authority Business Growth Incentives (LABGI) Reserve for these purposes.

4.2 **Legal Issues** (Monitoring Officer)

- 4.2.1 At present the Council cannot refuse to grant a licence providing the applicant meets all of the necessary conditions. It may only do so if it is satisfied there is no significant demand that is not met for hackney carriages, which relies on independent evidence derived from a survey. A party aggrieved by the refusal to grant a licence (even one delayed whilst having a survey conducted to determine his application) may appeal to the crown court.
- 4.2.2 The Council is under no statutory duty of prior consultation when exercising its powers under the Town Police Clauses Act 1847, as amended by the Transport Act 1985. However, if any consultation is conducted including whether to re-impose a limit it must be conducted properly and meaningfully.⁶ A failure to carry out consultation properly may lead to the resulting decision being open to challenge by way of judicial review.
- 4.2.3 If a limit is imposed following an unmet demand survey, any limit should not be set at a level lower than the number of existing licences – to remove licences from existing licence holders is potentially challengeable on human rights grounds.

4.3 Potential Risks

Potential Risk	Likelihood	Impact	Overall score
Continuing with existing policy may lead to increasing numbers of hackney carriages on the streets	3	3	9
Reputational and legal risk of introducing a limit without a survey	3	3	9
<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>			
Risks are to be scored 1 - 4 for both Likelihood and Impact Likelihood 1=unlikely 2=possible 3= highly likely 4= virtually certain Impact 1= very little 2=not very serious 3= serious 4= catastrophic So overall maximum score is 16			

⁶ R (on the application of Royden) v Wirral Metropolitan Borough Council [2002] EWHC Admin 2484.

Appendix

Submission from Watford Hackney Carriage Drivers' Association

Background Papers

The following background papers were used in the preparation of this report. If you wish to inspect or take copies of the background papers, please contact the officer named on the front page of the report:

As identified in footnotes

File Reference

None