

Report to: Cabinet

Date of Meeting: 1 February 2016

Report Title: Proposals to Delimit the Number of Hackney Carriages in Hastings

Report By: Mike Hepworth
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Purpose of Report

To enable Cabinet to review the Council's current policy of limiting the number of licensed hackney carriages, and to consider introducing a new policy of carefully controlled delimitation, through an updated quality standard for all newly licensed hackney carriages.

Recommendation(s)

- 1. Cabinet endorses the proposal to delimit hackney carriages in conjunction with the introduction of a new quality standard for all newly licensed vehicles, and grandfather rights for existing plate holders.**
- 2. Cabinet instructs the Council's Licensing Manager to establish and chair a working group including the trade and other interested parties. The group will develop the new quality standards and report them to the Council's Environment and Safety Board for consideration and approval, and examine the potential for additional hackney carriage ranks in the borough.**
- 3. The Council's Environment and Safety Board will review the effects of the new policy and the quality standard for new licences 6 months after it has been fully implemented (and periodically thereafter), and if necessary make recommendations for change to Cabinet.**
- 4. Cabinet recommends this updated policy to Full Council.**

Reasons for Recommendations

Delimiting in conjunction with the introduction of updated quality standards for all new licensed hackney carriages, will reduce the likelihood of a large unsustainable increase in the number of hackney carriages.

The provision of grandfather rights for existing plate holders will protect their interests.

Over time the new quality standards will result in an improved service for the travelling public, through the introduction of newer more accessible vehicles. There will also be environmental benefits as the emissions standards will be higher.



Introduction

1. Hastings Borough Council is the licensing authority for the Borough in respect of hackney carriages, and for many years it has restricted the numbers of hackney licences issued in the borough.
2. The limit currently stands at 48 and can continue at this figure provided the Council can provide evidence of no unmet demand for hackney services in the Borough, the power being contained in section 16 of the Transport Act 1985.
3. In order that this position can be justified an independent review of demand for the service is needed, and such a survey must reflect the current position and needs to be updated every 3 to 5 years. The last survey carried out in Hastings was in 2006, and therefore if a limit is to be retained there is clearly an urgent need for a new independent unmet demand survey.
4. The 2006 survey was undertaken as a direct result of a letter from the Department for Transport, which wrote to all Councils that restricted hackney numbers, requesting a review of that policy. The survey found that there was no significant unmet demand for hackney services, and the limit of 48 licences was retained.
5. It was always understood that to maintain the limit at 48, further unmet demand survey work would need to be undertaken on a regular basis. However, in the meantime Government instigated a complete review of hackney carriage and private hire licensing to be carried out by the Law Commission. In the circumstances, the Council decided to wait for the results of that review to be published. One of the issues under consideration was whether or not to remove the Local Authority discretion in matters such as hackney carriage limits.
6. The Law Commission review has now been completed and published, and the discretion to restrict numbers of hackney carriages has been retained. This was surprising as the imposition of such a quota system has been seen by Government and many local authorities as an unacceptable form of restrictive practice. As a result many authorities have already delimited the number of hackney carriages.

Implications for Hastings

7. Hastings is now thought to be one of less than a quarter of all local authorities who still restrict the numbers of hackney carriages. One effect of this policy is to place a value on such licences, which the licence holder may benefit from if they decide to cease trading and transfer the licence to another operator.
8. This value varies from area to area but will certainly amount to several thousand pounds. For example in Eastbourne in 2009 there was evidence that one licensee had paid £22,500 for a licence. The fact that a licence still commands a high commercial value indicates that there is a demand for them. However, the fact that a hackney carriage licence commands a commercial value is not a matter for the Council, and something it has no control over.

9. The Hastings and St Leonards Taxi Association, which represents local hackney carriage operators and drivers, has consistently defended this position and has willingly paid for the last two unmet demand surveys carried out in the Borough. However, the surveys were procured and directed by the Council not the Association. Government advice on best practice is for the local authority to commission their own survey and to then recoup the costs through increased licensing fees. The current cost of a survey is thought to be about £20,000.

Legal Considerations

10. Over the years there has been considerable litigation in this area, but it is clear that if a local authority has given proper consideration to all of the relevant matters, it can at any time decide to delimit the number of hackney carriages.
11. The relevant matters are a matter of fact in each case, but the following are amongst those thought to be relevant here:-
- The financial impact on existing licence holders who may have invested in their licence.
 - The potential custom for existing licence holders.
 - Congestion on hackney stands.
 - Congestion on the roads generally.
 - Benefits to the travelling public, such as improved service through increased competition, and better fleet accessibility.
 - The opportunity for others to become involved in the trade as a means of securing a livelihood.
 - The costs of commissioning a survey.
 - The costs and practicalities associated with allocating a small number of additional licences.
 - The costs of defending appeals against refusals to grant licences, either with or without an unmet demand survey.

Learning from decisions to delimit hackney licence plates by other Local Authorities

12. Many local authorities have opted for delimitation subject to a policy which supports quality control mechanisms. For example, whereby new licences will only be released for vehicles meeting a required specification. Where it is intended to delimit the number of licences available, but to implement a mechanism of quality control, no unmet demand survey is required.
13. The quality control policy could stipulate that a vehicle must be a specified type or make, for example European Whole Vehicle Type Approval, which ensures that vehicles meet relevant environmental, safety and security standards. Similarly it could specify that they must be wheelchair accessible, and that any vehicle is no older than 12 months old at the time of being licensed. In addition it would be possible to grant grandfather rights to our existing 48 plate holders.

14. This approach has been successfully implemented by several Sussex authorities, and the current position with all Sussex authorities is listed below. Of 13 only 3 currently operate a limit (including Hastings). One has a policy of sustained growth releasing 5 extra licences a year, but still carrying out 3 yearly unmet demand surveys. The latter approach would require a fair and transparent method of allocating the limited number of additional licences each year.
15. Only Crawley has relimited, and they now have a limit of 123 hackneys. We understand that this occurred as a result of the trade conducting their own independent survey, which showed no unmet demand, and they felt there was too much pressure on the existing hackney ranks. They were limited to 89 hackneys in 2002, they then delimited with quality controls and by 2012 the numbers rose to 111, an average rise of 2 per year. The application to relimit was debated and agreed, but before it was implemented another 12 applications were received and approved making the final total 123.

Authority	Current Approach
Arun	Delimited/ No quality controls (320 plates)
Brighton & Hove	Limited with managed growth of 5 new per year with quality control (560 plates)
Worthing/Adur	Delimited with Quality Control (wheelchair accessible vehicle)
Rother	No limits ever imposed
Mid Sussex	Limit on numbers (154)
Hastings	Limit on numbers (48)
Eastbourne	Delimited with quality control (wheelchair accessible vehicle and age limits)
Crawley	Limited then delimited with quality controls (wheelchair accessible vehicle) then relimited (123 licences)
Chichester	Delimited with quality control (wheelchair accessible vehicle and emissions)
Horsham	Delimited, no quality controls (52 plates), no interest in new applications
Lewes	No limits imposed
Wealden	No limits imposed

Consultation

16. Last autumn the Council carried out a consultation seeking feedback on the proposal to delimit. The consultation was undertaken with the local hackney association, all independent hackney carriage owners, all private hire operators, Ward Councillors, Resident Associations and the local disability forum.
17. As a result extensive responses were received from the hackney association, several independent hackney owners, a large private hire operator within the Borough, and 2 local Councillors. The results are summarised below.
18. The large private hire operator submitted a very thorough response which fully supported delimitation, but with extensive quality controls on new applications and

the granting of grandfather rights to the existing 48 plates in perpetuity. It also suggested that the hackney carriage ranks were inadequate and should be reviewed.

19. The local Hackney Association response was from 40 of the existing plate holders, and was also comprehensive. They don't agree with the proposals and request a new unmet demand survey, the cost of which would be recouped through their licence fees over a two year period. Their main arguments against delimiting are based on assumptions that hackney carriage numbers will increase and private hire numbers will decrease, giving an overall reduction in service for the public.
20. They also comment on the potential for loss of earnings because they state that most of the 48 hackneys are currently double shifted (operating day and night shifts with different drivers). They say that if numbers were delimited many of the existing drivers would want a licensed hackney carriage of their own, and that most would only want to work the "good shifts" (daytime and Friday and Saturday nights), thereby reducing availability to the public at other times.
21. Our Licensing Manager has undertaken research into delimitation of hackneys elsewhere, and this showed that such concerns are often raised by the hackney trade when proposals to delimit are considered. However, these fears are not generally borne out, and in the opinion of the Licensing Manager could be mitigated by the introduction of additional new quality controls on new applicants. This has worked well elsewhere, with only small numbers of new applicants for hackney licences, and little change to the private hire numbers.
22. In their response, the hackney association also stated that several authorities have delimited and then relimited due to service issues that arose as a result of delimitation. The Licensing Manager has contacted all the authorities cited, and spoken to them about this. Of the four quoted only two actually now limit numbers, one of which is about to delimit again. The remaining don't limit numbers but have been affected by the decision of neighbouring authorities to delimit.
23. For example Chesterfield is a small mainly rural authority. It borders the City of Sheffield, and when Sheffield delimited without quality controls their hackney numbers increased dramatically and operator/driver income dropped. A considerable number of their vehicles then transferred to Chesterfield, increasing their numbers in a short period.
24. Seven individual responses were received from drivers, all but one of which were included in the hackney association response. The remaining driver also disagreed with the removal of the limit and disagreed with making future vehicles disability accessible.
25. Two Councillors responded. One stated that the current arrangements could be seen as restrictive practice, and questioned the validity of the current hackney limit. They made the point that the private hire trade also play an invaluable role in public transport in the borough. The other Councillor commented on the current position being a restrictive trade practise, and that these practices are rapidly diminishing. They also stated that it was reasonable to give the hackney trade an opportunity to point out the benefits of the existing position for the town, and as mentioned above,

the trade association have submitted a detailed response to the consultation, which is attached in full at appendix A.

26. Mr Graham Wallace the honorary secretary of the local hackney association has also submitted a petition to the Council on behalf of the association. Whilst it doesn't introduce any additional arguments against delimiting, it does call for the retention of the current policy on hackney carriages, and for the Council to commission an independent unmet demand survey as a matter of urgency. The petition has received 11 signatures from within the association, and Mr Wallace has requested the opportunity to address Cabinet when this report is considered.

Conclusions

27. Members are advised that delimiting in conjunction with a quality control policy has been challenged but upheld in the cases of Regina v The City and County of Swansea ex parte Jones and Regina v The City of Newcastle ex parte Blake. Therefore such an approach is considered to be lawful.
28. This Council is now one of a dwindling number of local authorities retaining a limit on hackney carriage plates, and this approach continues to be contrary to Government policy and advice.
29. There is no need to carry out an unmet demand survey to evidence the case for delimiting.
30. Any proposals to delimit should be considered primarily on the basis of the interests of the travelling public, and wider consumer benefits. Not for example simply from the perspective of the potential loss of value of the plates to the existing licensees. In other words, do the customers benefit from the existing limit, and will there be a negative impact on customers if we delimit?
31. As seen in Crawley, a decision to delimit is not irreversible, and in Hastings we're recommending that the situation would be monitored by the Environment and Safety Board. If there was higher than anticipated growth in the number of newly licensed hackney carriages, the Board could commission an unmet demand survey, and then if appropriate consider the need to relimit.
32. For these reasons it is suggested that the Council should now give consideration to delimiting, rather than commissioning another unmet demand survey, which would potentially lead to us either retaining the existing limit or releasing a limited number of new plates to satisfy any unmet demand that may be identified by the survey, and fly in the face of Government guidance on best practice.
33. As a result of his recent research on these matters, the Licensing Manager has also considered the scope for introducing new taxi ranks for use by the hackneys. He has identified several locations that may be viable, and will be pursuing this with the trade and appropriate authorities.

Policy Implications

34. From an equalities perspective delimiting in conjunction with a quality control system for new hackney carriage plates would provide the scope for gradually improving the accessibility of the Hastings hackney carriage fleet.
35. From an environmental perspective, delimiting in conjunction with a quality control system for new hackney carriage plates would provide the scope for gradually improving the environmental emissions performance of the Hastings hackney carriage fleet.

Wards Affected

Ashdown, Baird, Braybrooke, Castle, Central St. Leonards, Conquest, Gensing, Hollington, Maze Hill, Old Hastings, Ore, Silverhill, St. Helens, Tressell, West St. Leonards, Wishing Tree

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	Yes
Crime and Fear of Crime (Section 17)	No
Risk Management	No
Environmental Issues	Yes
Economic/Financial Implications	Yes
Human Rights Act	No
Organisational Consequences	No
Local People's Views	No
Anti-Poverty	No

Additional Information

Appendix A – Hastings and St Leonards Taxi Association response to the consultation.

Background Papers

Responses to consultation

Department for Transport best practise guidance issued in 2010, chapters 45 to 51.

Chapter 11 of the Law Commission report published in May 2015.

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