

**Title of meeting:** LICENSING COMMITTEE

**Date of meeting:** 06 October 2017

**Subject:** Town Police Clauses Act 1847 - Consideration of demand for the services of hackney carriages within the City of Portsmouth

**Report by:** Licensing Manager

**Wards affected:** All

**Key decision:** No

**Full Council decision:** No

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**1. Purpose of report**

**1.1** To receive and consider the Vector Transport Consultancy report and appendices ("The Vector Report") into the demand or otherwise for the services of hackney carriages and to determine, as a matter of local policy, the number of hackney carriage vehicles licensed to stand and ply for hire within the City of Portsmouth.

**2. Recommendations:**

**(1) That the report be received and noted;**

**(2) That the Licensing Committee note the report conclusions that "there is no significant unmet demand" for the services of hackney carriages within the City of Portsmouth;**

**(3) That, as a consequence to (2) above, the Licensing Committee determine the number of hackney carriages licensed to ply for hire within the city (currently 234 vehicles) as follows:**

**1. To maintain the current limit of 234 licensed hackney carriages**

**2. OR to issue such further number of hackney carriage vehicle licences as the committee thinks fit and subject to existing policy requirements (particularly relating to vehicle specification and vehicle age limits)**

3. **OR to remove completely the limit on the number of hackney carriage vehicle licences in Portsmouth (subject to existing vehicle policy requirements) and let market forces determine the number of licensed hackney carriage vehicles standing and plying for hire within the city**

**(4) That the Director of Culture & City Development be authorised to amend such policy directives, conditions of licence and application procedures commensurate with any formal resolutions of the committee**

### **3. Background**

**3.1** The Statement of Licensing Policy for the control, supervision and enforcement of the hackney carriage and private hire trades in Portsmouth received committee and council approval with effect from 01 April 2016 - Licensing Committee minute 09/2016 and full Council minute 27/2016 refer.

**3.2** The adopted policy considered the question of demand for the distinctive services of licensed hackney carriages standing and plying for hire in the city. The committee agreed that the control of vehicle numbers must be based on a local determination of local issues and focusing on evidence of unmet demand for the distinct services of hackney carriages.

The last unmet demand survey was undertaken in 2006.

**3.3** Members heard passionate trade and other third party arguments both for and against the retention of quantity control numbers for the local taxi fleet and resolved to RETAIN the existing numeric limit of 234 vehicles subject to the commission of an independent survey into the demand, or otherwise, for the services of hackney carriages within the city.

**3.4** Following formal tender negotiations, Vector Transport Consultancy was commissioned to carry out a survey into the distinct demand for hackney carriage services and to report back to the committee with their findings and recommended options. Mr Iain MacDonald is the company principal and report author.

**3.5** The survey (by way of the use of fixed CCTV cameras at numerous agreed locations to provide empirical evidence) was undertaken between 0700 on 27 October 2016 and 0700 on 31 October 2016.

**3.6** The report has been discussed with the author and made available on the PCC web. All committee members and nominated trade representatives have received the report conclusions and executive summary. The report is attached as **Appendix A**.

3.7 The following "core" conclusions from the report have been established:

- The level of unmet demand is low within the overall survey
- Some evidence of passenger waiting for taxis was apparent - particularly in Albert Road
- The public consultation process was good
- The most common topic raised during public consultation was the level and command of English displayed by some drivers
- Wheelchair users and users with mobility impairments appear to be well served albeit by the private hire industry
- Parked private vehicles on ranks (Albert Road) was a concern
- Evidence of illegal plying for hire was noted in both Albert Road and Commercial Road
- 18,176 passenger movements were observed
- Hackney carriages were also working for established private hire operators

#### 4. The Legal Provisions

4.1 The Town Police Clauses Act 1847 is still the primary legislation controlling hackney carriage vehicles, proprietors and their drivers. By virtue of Section 37 of this Act, the Council previously had an absolute unfettered discretion to determine the number of hackney carriage vehicle licences that could be available at any one time.

4.2 Without exception, such restricted practices of quantity control introduced a "monopoly" scenario with plates only being made available by a culture of "buying and selling". Inevitably, waiting lists from applicants who wished to obtain a hackney carriage vehicle licence were commonplace with the Council receiving multiple enquiries from potentially suitable applicants in the extremely rare event of a plate becoming available.

Strict quantity controls measures also previously attracted hard and inflexible conditions of licence and policy directives requiring full-time driving, proprietors having no other work interests and a requirement for proprietors to personally drive their own vehicles.

4.3 However, Section 16 of the Transport Act 1985 qualified the absolute discretion to limit the number of hackney carriage vehicle licences by requiring the local authority to be satisfied "... **that there is no significant unmet demand for taxi services ...**" within its area. The burden therefore shifted to the Council to be satisfied as to the demand or otherwise rather than for the applicant to show evidence of demand when submitting an application.

4.4 This change in the law had significant implications upon local authorities and hackney carriage vehicle proprietors alike. The then Department of Transport issued advice to local authorities (Circular 3/85) in relation to the grant of hackney carriage vehicle licences which stated:

*“District Councils may wish to review their policy on the control of taxi numbers in the light of this new section. A limitation of taxi numbers can have many undesirable effects – an insufficiency of taxis either generally or at particular times or in particular places, insufficient competition between the providers of taxi services, detrimental customer satisfaction and prices for the “transfer” of taxi licences from one person to another which may imply an artificial restriction of supply.*

The circular gave a clear indication that Councils should not rely on the assertion of local taxi licence holders that demand was already catered for as they had evidence only of demand which they satisfied. The circular stated that it was for the Council to examine the evidence of unmet demand using local knowledge and circumstances.

This does not mean that a local authority **MUST** limit numbers if satisfied that demand for the services of hackney carriages is met but instead prevents, by way of statutory provision, local authorities from restricting vehicle numbers for any other reason. On the question of demand, the courts have considered the following:

***R –v- Brighton Borough Council ex parte Bunch (1989)***

*“... A local authority does not have to show that demand is satisfied at all times and may, for example, conclude there is no significant unmet demand where there are sufficient taxis – except for period during which existing drivers are reluctant to work anti-social hours ...”*

***R –v- Castle Point Borough Council ex parte Maud (2002)***

*“... There may be more than one method of assessing the current demand for taxis. The appropriate methods are not necessarily confined to counting passenger queues or calculating the delays to passengers. If there is convincing evidence of suppressed demand that may be relevant. For example, if it can be established by interview that there are a number of people in the district who wanted a taxi on certain occasions but could not find one and in the end, as second best, resorted to choosing a less satisfactory alternative solution, that would be relevant evidence of current demand. The local authority would have to be satisfied that the demand was, first, and foremost, for a taxi, so that inconvenience was being caused to the public through the shortages of taxis. It is in the end all a question of evidence ...”*

- 4.5** Part II of the Local Government (Miscellaneous Provisions) Act 1976 (the legislation which regulates private hire licensing) specifically prohibits the local authority from controlling private hire vehicle numbers.
- 4.6** The Department for Transport best practice guidance does not support quantity controls for hackney carriages but nevertheless recommends the commission of a survey on a regular basis to demonstrate there is no unmet demand should a policy of restricting vehicle numbers be retained.

**5. Reasons for recommendations**

**5.1** To bring forward proposals for consideration on the demand for the services of hackney carriages in Portsmouth in compliance with Licensing Committee minute 09/2016.

**6. Equality impact assessment**

A preliminary EIA has been completed and attached as **Appendix B**.

**7. Legal implications**

**7.1** Legal comment and advice by way of previous policy guidelines, binding High Court summary decisions and central government advice are all contained and embodied within the report.

**8. Finance comments**

There are no financial implications in respect of this report. The unmet demand survey and officer costs associated with this project have been financed from existing budgetary provision.

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Signed by:

**Appendices:**

**Appendix A:** Vector Transport Consultancy report, executive summary and conclusions

**Appendix B:** Preliminary EIA

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

| <b>Title of document</b>   | <b>Location</b>   |
|--|---|
| Department For Transport - Taxi & Private Hire vehicle Licensing - Best Practice Guidance 2010 | Published work<br><a href="https://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance">https://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance</a> |
| Town Police Clauses Act 1847   | Published Act<br><a href="https://www.legislation.gov.uk/ukpga/Vict/10-11/89/contents">https://www.legislation.gov.uk/ukpga/Vict/10-11/89/contents</a>  |

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|---|---|
| Statement of Licensing Policy for hackney carriage & Private Hire Matters | PCC Web and published work<br><a href="https://www.portsmouth.gov.uk/ext/documents-external/lic-hackney-carriage-private-hire-licensing-policy-final-v3.pdf">https://www.portsmouth.gov.uk/ext/documents-external/lic-hackney-carriage-private-hire-licensing-policy-final-v3.pdf</a> |
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The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

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Signed by: