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Regulatory Committee

Wednesday, 28 November 2018 6.30 p.m.
Council Chamber - Town Hall, Runcorn

A handwritten signature in black ink, appearing to read 'David W R', positioned above a rectangular stamp.

Chief Executive

COMMITTEE MEMBERSHIP

Councillor Pamela Wallace (Chair)
Councillor John Abbott (Vice-Chair)
Councillor Mike Fry
Councillor Pauline Hignett
Councillor Kath Loftus
Councillor Tony McDermott
Councillor Angela McInerney
Councillor Stef Nelson
Councillor Gareth Stockton
Councillor Kevan Wainwright
Councillor Andrea Wall

*Please contact Gill Ferguson on 0151 511 8059 or e-mail gill.ferguson@halton.gov.uk for further information.
The next meeting of the Committee is on Wednesday, 16 January 2019*

**ITEMS TO BE DEALT WITH
IN THE PRESENCE OF THE PRESS AND PUBLIC**

Part I

Item No.	Page No.
1. MINUTES	1 - 3
2. DECLARATION OF INTEREST	
Members are reminded of their responsibility to declare any Disclosable Pecuniary Interest or Other Disclosable Interest which they have in any item of business on the agenda, no later than when that item is reached or as soon as the interest becomes apparent and, with Disclosable Pecuniary interests, to leave the meeting during any discussion or voting on the item.	
3. RESTRICTION OF HACKNEY CARRIAGE VEHICLE NUMBERS IN THE BOROUGH	4 - 12
4. SCHEDULE 12A OF THE LOCAL GOVERNMENT ACT 1972 AND THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985	

PART II

In this case the Board has a discretion to exclude the press and public and, in view of the nature of the business to be transacted, it is **RECOMMENDED** that under Section 100A(4) of the Local Government Act 1972, having been satisfied that in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information, the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A to the Act.

5. TAXI MATTER	13 - 25
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In accordance with the Health and Safety at Work Act the Council is required to notify those attending meetings of the fire evacuation procedures. A copy has previously been circulated to Members and instructions are located in all rooms within the Civic block.

REGULATORY COMMITTEE

At a meeting of the Regulatory Committee on Wednesday, 3 October 2018 in the Council Chamber - Town Hall, Runcorn

Present: Councillors Wallace (Chair), Abbott (Vice-Chair), Fry, P. Hignett, K. Loftus, McDermott, A. McInerney, Nelson, G. Stockton and Wall

Apologies for Absence: Councillor Wainwright

Absence declared on Council business: None

Officers present: K. Cleary, J. Tully and N. Wheeler

Also in attendance: Two Members of the public

**ITEMS DEALT WITH
UNDER DUTIES
EXERCISABLE BY THE COMMITTEE**

REG7 MINUTES

The Minutes of the meeting held on 4th July 2018 having been circulated were signed as a correct record.

REG8 THE INCLUSIVE TRANSPORT STRATEGY

The Committee considered a report from the Under Secretary of State for the Department for Transport.

The Committee were advised that on 30 July 2018 the Under Secretary of State for Transport wrote to Local Authorities informing them of the Inclusive Transport Strategy (the Strategy) that was published on 25 July.

A small section of the Strategy deals with taxi and private hire licensing and issues arising from the report were set out in the agenda item. Members were informed that further reports to the Committee may arise depending on what the Department for Transport does in the future.

RESOLVED: That the report be noted.

Action

REG9 GAMBLING ACT 2005 STATEMENT OF GAMBLING POLICY

The Committee considered a request to approve a Draft Statement of Gambling Policy for recommendation to the Council for adoption.

The Committee was advised that only one response was received to the consultation process and that was from the Gambling Commission and consideration was given to the points raised by them. Consequently, minor changes to the original draft were made to the section on bingo premises.

RESOLVED: That having undertaken a consultation exercise the draft Statement of Gambling Policy as amended be approved by the Committee and be recommended to Council for adoption. An appropriate form of wording for the Council resolution would be: "The Council:

Operational
Director Legal
and Democratic
Services

1. adopts the Statement of Gambling Policy attached to the report to come into effect immediately following the expiry of the current Policy; and
2. directs that the Operational Director Legal and Democratic Services to publish the Statement in accordance with section 349 Gambling Act 2005 and the Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006."

REG10 SCHEDULE 12A OF THE LOCAL GOVERNMENT ACT 1972 AND THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

The Committee considered:

- (1) Whether Members of the press and public should be excluded from the meeting of the Board during consideration of the following items of business in accordance with Sub-Section 4 of Section 100A of the Local Government Act 1972 because it was likely that, in view of the nature of the business to be considered, exempt information would be disclosed, being information defined in Section 100 (1) and paragraph 3 of Schedule 12A of the Local Government Act 1972; and
- (2) Whether the disclosure of information was in the public interest, whether any relevant exemptions were applicable and whether, when applying the

public interest test and exemptions, the public interest in maintaining the exemption outweighed that in disclosing the information.

RESOLVED: That as, in all the circumstances of the following items only of the Committee Agenda, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, members of the press and public be excluded from the meeting during consideration of the following items of business in accordance with Sub-Section 4 of Section 100A of the Local Government Act 1972 because it was likely that, in view of the nature of the business, exempt information would be disclosed, being information defined in Section 100 (1) and paragraph 3 of Schedule 12A of the Local Government Act 1972.

REG11 TAXI MATTER

Case No 716

A Single Status Drivers Licence be issued and a written reprimand given for the failure to disclose convictions. The written reprimand to remain on the applicants file.

REG12 TAXI MATTER

Case: No 717

As the applicant failed to attend the meeting the Committee could not be satisfied that the applicant was a fit and proper person to be granted a licence. Consequently the applicant would be given one more chance to attend the next meeting of the Committee on 28 November 2018. If the applicant fails to attend on that date the Operational Director Legal and Democratic Services be given authority to refuse the application.

Operational
Director Legal
and Democratic
Services

REG13 TAXI MATTER

Case No 718

A restricted Single Status Drivers Licence be issued and a written reprimand be given for the failure to disclose convictions. The written reprimand to remain on the applicants file.

Meeting ended at 7.55 p.m.

REPORT:	Regulatory Committee
DATE:	28 th November 2018
REPORTING OFFICER:	Strategic Director Enterprise, Community and Resources
PORTFOLIO:	Resources
SUBJECT:	Restriction of Hackney Carriage Vehicle Numbers in the Borough
WARDS:	Borough-wide

1. PURPOSE OF REPORT

To consider requests to issue additional hackney carriage vehicle plates in addition to the current limits.

2. THE APPLICATIONS

- 2.1 The Council has received applications from John Roberts, Lee Barks and Darren Dickson to consider issuing additional hackney carriage plates beyond the current limit. The number of vehicles now involved is 15 as set out below.
- 2.2 Mr Roberts had asked to be issued with 14 hackney carriage vehicle licences. As one of the vehicles within the 14 applications is now being used with an existing hackney carriage licence only 13 applications are now to be considered.
- 2.3 Mr Barks and Mr Dickson have made a single application each.
- 2.4 The current limit on the number of hackney carriage vehicle licences in the Halton Borough area is set at 267. This has been the limit for a number of years.
- 2.5 The applications from Mr Roberts are accompanied by a note from Mr Robert's legal advisor which contains a number of incorrect statements. The note is set out in full at Appendix A.
- 2.6 The note contains a number of matters which must be challenged. The specifics are as follows:

- 2.6.1 Point 1 - *“Following three decisions to refuse to consider applications for Hackney Carriage Licences ...”*. This is not correct. No decisions to refuse to consider applications have been made.
- 2.6.2 Point 2 - ... to refuse to consider the applications is tantamount to a refusal of them – especially so in circumstances where the Council is operating absolutely no form of waiting list or system for administering them. This is incorrect in a number of aspects. First, it is predicated on the incorrect statement in Point 1; second, a failure to determine an application (which has not occurred) cannot amount to a refusal; third, the absence or presence of a waiting list has no logical connection to the alleged failure to determine an application.
- 2.6.3 Point 4 - *“The Council does not and never has carried out an unmet demand survey and as such has no authority whatsoever to refuse to consider applications unless of course there is a defect within them which has not been raised”*. An unmet demand survey was undertaken many years ago but in any event the assertion that the Council has *“no authority whatsoever”* to refuse the application is incorrect.
- 2.6.4 Point 5 - *“It is submitted that section 16 Transport Act 1985 obliges the defendant to ensure that as long as any restriction is in force, that there is no significant unmet demand. The Council is not so doing and therefore cannot arbitrarily select a number in a policy and apply it - it is incorrect and unlawful”*. This is incorrect. It is a vague summary of the legislation. The Council is not acting in an arbitrary way and the current policy is not unlawful.
- 2.7 Appendix B sets out the statutory rules.
- 2.8 The requests made by Mr Barks and Mr Dickson did not contain any additional information.
- 2.9 All three applicants made their applications together and are all associated with District Taxis. It is therefore appropriate for all of the applications to be dealt with together in a single agenda item.

3. SUPPORTING INFORMATION

- 3.1 The concept of unmet demand for hackney carriages applies only when these vehicles are standing or plying for hire. This is work from the ranks (designated and private) as well as available to being hailed in the street.

- 3.2 Work that is derived from customers obtaining the services of these vehicles in any other way i.e. by phone or computer is private hire work and therefore not part of any unmet demand.
- 3.3 Of the current 267 hackney carriage licences, 86% (229) of these drivers have decided to pay an amount of money (known as settle or track) each week to private hire operators to subsidise their work. Only 14% (38) of drivers derive their work solely from the ranks. These figures are correct as of 16th October 2018. It follows that there is not enough demand at present to meet the needs of the current number of hackney carriages.
- 3.4 The following table compares numbers of licensed vehicles in Halton with all of its surrounding licensing authorities.

Area	Limit on number of HCVs?	Population	Number of HCVs	Number of PHVs	% of HCVs to PHVs	% of HCVs to Population
Cheshire West & Chester	Y (1 of 3 zones)	338,000	349	1215	28.72	0.10
HALTON	Y	127,600	267	120	222.50	0.21
Knowsley	Y	148,600	231	1592	14.51	0.16
Liverpool	Y	496,000	1426	1981	71.98	0.29
Sefton	Y	274,000	271	4070	6.66	0.10
St Helens	Y	179,300	63	500	12.6	0.04
Warrington	Y	209,000	149	428	34.81	0.07

- 3.5 The figures from the table in 3.4 confirm that Halton has a considerably higher percentage of hackney carriage vehicles per head of population when compared with the other authorities in the table except for Liverpool. The percentage of vehicles is only exceeded by Liverpool which is a major city and popular tourist location. Unlike Halton, Liverpool has limited (if any) free parking in the city which would contribute to the necessity for the high volume of hackney carriages there.
- 3.6 The table also shows that Halton is unique in have such an overwhelming number of hackney carriages as compared with private hire vehicles.
- 3.7 The number of private hire vehicles cannot be limited. However, the table shows that in Halton the number of private hire vehicles is disproportionately low when compared with the other districts. Had there been an unmet demand for hackney carriages in the Borough it would be expected that a much higher number of

private hire vehicles would be licenced to take up the alleged demand.

- 3.8 A petition has been received from the Halton licensed trade. The main part of the petition states:

“We do not in any way refuse the need for more private hire vehicles servicing home and business addresses as we do acknowledge the growth in the borough in recent years. This borough is very different to areas adjacent ie Chester, Liverpool and Manchester which all have great demand for taxis to be flagged down or large queues on ranks. Both Widnes and Runcorn rely massively on jobs from their respective systems and could not earn a living solely working taxi ranks.”

“With the above in mind we urge you to refuse any application for an increase of any kind in relation to the current number of hackney licences in Halton.”

The petition has been signed by 187 licensed drivers.

4. ANALYSIS

- 4.1 As can be seen from Appendix B the power to restrict the number of hackney carriages applies only if the licensing authority is satisfied that there is no **significant** demand for the services of hackney carriages in the area which is unmet.
- 4.2 The assertion by the applicant’s solicitor that an unmet demand survey is required is incorrect. The legislation is perfectly clear on this.
- 4.3 Where surveys are undertaken they are relatively expensive (typically in the order of between £12,000 - £15,000) and the cost is borne by the hackney carriage trade.
- 4.4 It should be pointed out that there is only one test which must be addressed by the Committee. Other considerations are not material including the impact of increasing numbers of hackney carriage plates on the hackney carriage sector.
- 4.5 Should the Committee consider that there is no unmet demand for hackney carriages this does not prevent it from granting the applications (albeit that this is not the argument being put forward by Mr Roberts). Nevertheless, the impact of such a decision on the current policy should be taken into account as indicated in the Policy Section below.

4.5 No additional justification in favour of the application has been put forward by the applicant.

4.6 The matter of the restricted number of hackney carriages in the Borough was considered at the last Taxi Consultative Group meeting in October. The applicant was present at that meeting. Apart from the applicant the members (including representatives of the hackney carriage and private hire sectors) of the Group were all of the opinion that there was no unmet demand.

5. OPTIONS

5.1 The options available to the committee are:

- Grant the applications in principle for 15 new hackney carriage vehicles (subject to the usual application process being successfully completed and compliance with the usual hackney carriage pre-conditions).
- Refuse the applications.
- Defer a decision pending the result of an unmet demand survey and a subsequent review of the policy by the Executive Board.

6. POLICY IMPLICATIONS

6.1 The applications have not been posed as applications to change Council policy but rather as pre-cursors to individual applications. Consequently this is a matter entirely for the Regulatory Committee to determine – it is not a matter for recommendation to Executive Board.

6.2 Nevertheless, the Committee may take the view that granting the applications would have severe implications on the sustainability of the current policy.

7. OTHER IMPLICATIONS

There are no other implications arising out of this report.

8. IMPLICATIONS FOR THE COUNCILS PRIORITIES

8.1 **Children and Young People in Halton**
None

8.2 **Employment Learning and Skills in Halton**
N/A

8.3 **A Healthy Halton**
N/A

8.4 **A Safer Halton**
None

8.5 **Halton's Urban Renewal**
N/A

9. RISK ANALYSIS

N/A

10. EQUALITY AND DIVERSITY ISSUES

N/A

11. LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document	Place of Inspection	Contact Officer
Application Documents	Licensing Office	Kay Cleary

APPENDIX A

REGULATORY COMMITTEE MEETING

COMMENTS OF MR JOHN ROBERTS AND OTHERS

COMMENTS

1. Following three decisions to refuse to consider applications for Hackney Carriage Licences Mr Roberts asks that this matter be added to the committee meeting and it has been confirmed that this is the position for October.
2. He argues that a decision to refuse to consider the applications is tantamount to a refusal of them – especially so in circumstances where the Council is operating absolutely no form of waiting list or system for administering them.
3. The defendants rely upon the power contained in the provisions of Section 16 Transport Act 1985 which provides as follows.

'The provisions of the [Town Police Clauses Act 1847](#) with respect to hackney carriages, as incorporated in any enactment (whenever passed), shall [(subject to [section 161](#) of the [Equality Act 2010](#))] have effect— (a) as if in [section 37](#), the words “such number of” and “as they think fit” were omitted; and (b) as if they provided that the grant of a licence may be refused, for the purpose of limiting the number of hackney carriages in respect of which licences are granted, if, but only if, the person authorised to grant licences is satisfied that there is no significant demand for the services of hackney carriages (within the area to which the licence would apply) which is unmet.'

4. The Council can only restrict numbers for Hackney Carriage Licences where it is satisfied that there is no significant unmet demand. It has **no other discretion** to do so under Section 16 of the Transport Act 1985 (*R v Reading Borough Council* (1990) R.T.R 399). The Council does not and never has carried out an unmet demand survey and as such has no authority whatsoever to refuse to consider applications unless of course there is a defect within them which has not been raised. As such any form of restriction without this is unlawful and open to challenge. Mr Roberts is pursuing all avenues to pursue this before legal action begins.
5. It is submitted that section 16 Transport Act 1985 obliges the defendant to ensure that as long as any restriction is in force, that there is no significant unmet demand. The Council is not so doing and therefore cannot arbitrarily select a number in a policy and apply it – it is incorrect and unlawful.

APPENDIX B

Restricting numbers of hackney carriages

1. As originally enacted section 37 of the Town Police Clauses Act 1847 gave the licensing authority the power to restrict the number of hackney carriages as it thought fit.
2. The 1847 Act was amended by section 16 Transport Act 1985. This provision removed the unrestricted power of the licensing authority to restrict the number of hackney carriages by removing the text marked [F1] shown below.
3. The 1985 Act substituted the power to restrict the number of hackney carriages only if the licensing authority is satisfied that there is no significant demand for the services of hackney carriages in the area which is unmet. This is referred to as the unmet demand test.
4. The 1985 Act does not specify how a licensing authority would determine whether or not there was an unmet demand at any particular time. A number of licensing authorities have undertaken unmet demand surveys to advise on the questions. Such surveys are expensive (running into thousands of pounds) and would be paid for by the hackney carriage trade.
5. The 1985 Act has itself been amended by section 161 Equality Act 2010. The 2010 amendments apply to applications for hackney carriage vehicle licenses in respect of fully wheelchair compliant vehicles. In such cases the application must be granted if the proportion of fully wheelchair accessible taxis licensed in the area is less than the proportion that is prescribed by the Secretary of State. The Secretary of State has not prescribed a percentage so the 2010 Act has no effect.

Town Police Clauses Act 1847

37 Hackney carriages to be licensed.

The commissioners may from time to time licence to ply for hire within the prescribed distance, or if no distance is prescribed, within five miles from the General Post Office of the city, town, or place to which the special Act refers, (which in that case shall be deemed the prescribed distance,) [F1such number of]hackney coaches or carriages of any kind or description adapted to the carriage of persons [F1as they think fit].

Transport Act 1985

16 Taxi licensing: control of numbers.

The provisions of the Town Police Clauses Act 1847 with respect to hackney carriages, as incorporated in any enactment (whenever passed), shall (subject to section 161 of the Equality Act 2010) have effect—

(a) as if in section 37, the words “such number of” and “as they think fit” were omitted; and

(b) as if they provided that the grant of a licence may be refused, for the purpose of limiting the number of hackney carriages in respect of which licenses are granted, if, but only if, the person authorised to grant licenses is satisfied that there is no significant demand for the services of hackney carriages (within the area to which the licence would apply) which is unmet.

Equality Act 2010

161 Control of numbers of licensed taxis: exception

(1) This section applies if—

(a) an application for a licence in respect of a vehicle is made under section 37 of the Town Police Clauses Act 1847,

(b) it is possible for a disabled person—

(i) to get into and out of the vehicle in safety,

(ii) to travel in the vehicle in safety and reasonable comfort, and

(iii) to do the things mentioned in sub-paragraphs (i) and (ii) while in a wheelchair of a size prescribed by the Secretary of State, and

(c) the proportion of taxis licensed in respect of the area to which the licence would (if granted) apply that conform to the requirement in paragraph (b) is less than the proportion that is prescribed by the Secretary of State.

(2) Section 16 of the Transport Act 1985 (which modifies the provisions of the Town Police Clauses Act 1847 about hackney carriages to allow a licence to ply for hire to be refused in order to limit the number of licensed carriages) does not apply in relation to the vehicle; and those provisions of the Town Police Clauses Act 1847 are to have effect subject to this section.

(3) In section 16 of the Transport Act 1985, after “shall” insert “(subject to section 161 of the Equality Act 2010)”.

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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