

REPORT: Regulatory Committee

DATE: 2 September 2020

REPORTING OFFICER: Strategic Director Enterprise, Community and Resources

PORTFOLIO: Resources

SUBJECT: Restriction on Hackney Carriage Vehicle Numbers in the Borough

WARDS: Borough-wide

RECOMMENDATIONS: That

- (1) the Committee further consider the requests to issue additional hackney carriage vehicle plates in addition to the current limits; and**
- (2) the Committee recommend to the Executive Board to adopt/readopt as Council policy the option listed at section 2.10 of the agenda which the Committee considers most appropriate.**

1. PURPOSE OF THE REPORT

- 1.1 To comply with a court order to further consider requests to issue additional hackney carriage vehicle plates in addition to the current limits and
- 1.2 To consider recommending that the Executive Board adopt/readopt as Council policy the option listed at section 2.10 of the agenda which the committee considers most appropriate.

2 BACKGROUND

- 2.1 Members are referred to the agenda of the Committee dated 28 November 2018. The relevant minute of that meeting is set out as **Appendix 1** of this report.
- 2.2 As can be seen from the minute applications had been received from John Roberts, Lee Barks and Darren Dickson. Mr Roberts requested 14 plates (reduced to 13) and Mr Barks and Mr Dickson made single applications. Following a hearing the applications were all refused *inter alia* because the Committee considered that there was no significant unmet demand for Hackney Carriages in the Borough.
- 2.3 The Committee based its conclusion on what was considered to be overwhelming statistical evidence comparing populations and numbers of hackney carriages in other boroughs.

- 2.4 However, only Mr Roberts exercised his right of appeal to the Crown Court. The court did not accept that the statistical evidence put before the Committee was sufficient. It ruled on 4 July 2019
- 2.4.1. First that an unmet demand survey be commissioned to 'ascertain' definitively whether there is significant unmet demand for hackney carriages within the borough. Thereafter, if significant unmet demand is identified, to issue licenses in a manner fair to all persons who would wish to be considered for such a licence and
- 2.4.2 secondly, that on the survey being completed the licensing authority reconsider the Applicants' application.
- 2.5 Consequently, the Council commissioned Jacobs (a Leeds based company) to undertake an unmet demand survey on behalf of the Council.
- 2.6 The results of the survey which was sent to the Council was dated 14 April 2020 and are appended as **Appendix 2**.
- 2.7 The unmet demand survey demonstrates that the Regulatory Committee was completely correct in concluding that there was no significant unmet demand for hackney carriages in the Borough. The methodology used in the survey is a little complicated but it boils down as saying that if the number 80 is the threshold at which there is a significant unmet demand any numbers in excess of 80 would be converted into the additional plates which ought to be issued to bring the system back into balance (i.e. where there would then be no significant unmet demand).
- 2.8 The survey concluded that the number applicable to Halton was 60 (i.e. 25% below the threshold at which there would be a significant unmet demand). Although the survey was not designed to consider this question, it is legitimate for the Council to conclude that not merely is there no significant unmet demand in the Borough, there is no unmet demand at all.
- 2.9 The exercise has cost nearly £30,000: £15,000 for the survey and the rest in costs for the Crown Court hearing. This is being claimed back from the hackney carriage trade over a five year period.
- 2.10 The conclusions of the survey includes the following: "On this basis the authority has the discretion in its taxi licensing policy and may either:
- 2.10.1 Maintain its current policy of limiting to 267 hackneys ;

2.10.2 Issue any number of additional plates as it sees fit, either in one allocation or a series of allocations; or

2.10.3 Remove the numerical restriction on licences.

2.11 There are therefore two matters for the Committee to address:

2.11.1 The first is to re-consider the applications again.

2.11.2 The second is to recommend the Executive Board to adopt/re-adopt as Council policy the option listed at 2.10 above which the Committee considers most appropriate.

3. SUPPORTING INFORMATION

3.1 The applicant Mr Roberts has been sent a copy of the unmet demand survey on 10 June 2020 however no comment has been received from him since that date.

3.2 The applicant Mr Roberts has been notified of this meeting and has been given the opportunity of making representations to the Committee.

4. OPTIONS

4.1 The options available to the committee with regards to the reconsideration of the applications are:

- Grant the applications for 13 new hackney carriage vehicles (subject to the usual application process being successfully completed).
- Refuse the applications.

4.2 The options available to the committee with regards to the Council's policy on the limitation on taxi numbers in the Borough are set out at section 2.10 of the agenda.

5. POLICY IMPLICATIONS

5.1 The applications were not 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.

5.2 Nevertheless, the Committee may take the view that granting the applications would have a detrimental effect on the current policy.

5.3 Part of the recommendation to this agenda is to formally recommend the Executive Board to adopt/re-adopt as Council policy the maximum

number of hackney carriages to be licensed within the Borough.

- 5.4 The relationship between Regulatory Committee decision making and Executive Board decision making must be interpreted in accordance with (1) the Local Government Act 2000, (2) the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (SI 2000/2853), and (3) the case of R (On the application of 007 Stratford Taxis Limited v Stratford on Avon District Council 2011. This Court of Appeal decision interpreted the meaning of the Local Authorities (Functions and Responsibilities)(England) Regulations 2000 in respect of matters which must be dealt with by a Council's Executive or by a committee of its council. Essentially, the court held that: (1) it was clear that individual applications relating to taxi matters must be dealt with by the equivalent of this Council's Regulatory Committee and (2) matters calculated to facilitate, or be conducive or incidental to such applications must also be dealt with in the same way but (3) any "plan or strategy" associated with such a function would be an executive function and therefore have to be determined by a council's executive. The Stratford case concerned the introduction of a wheelchair access policy. The decision was taken by the Council's cabinet rather than its Licensing Committee. The challenge from the taxi trade was that the Licensing Committee should have adopted the policy. This element of the challenge was rejected by the court.
- 5.5 Consequently, any decision of the Regulatory Committee relating to policy matters will be by recommendation to the Executive Board.
- 5.6 In deciding whether or not to adopt or to recommend the adoption of a policy the following questions should be addressed:
- 5.6.1 Has proper consultation been undertaken?
- 5.6.2 Are the proposals necessary and proportionate?

5.6.3 In considering 5.4.2 what is it about any existing policy which has proved deficient or has failed to deal adequately with changes in circumstance?

6. OTHER IMPLICATIONS

There are no other implications arising out of this report.

7. IMPLICATIONS FOR THE COUNCILS PRIORITIES

7.1 Children and Young People in Halton

None

7.2 Employment Learning and Skills in Halton

N/A

7.3 A Healthy Halton

N/A

7.4 A Safer Halton

None

7.5 Halton's Urban Renewal

N/A

8. RISK ANALYSIS

N/A

9. EQUALITY AND DIVERSITY ISSUES

N/A

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

Document	Place of Inspection	Contact Officer
Various Documents	Licensing Department	Kay Cleary

APPENDIX 1

Restriction of Hackney Carriage Vehicle Numbers in the Borough

- [Meeting of Regulatory Committee, Wednesday, 28th November, 2018 6.30 p.m. \(Item 15.\)](#)

Minutes:

The Committee were requested to consider issuing additional hackney carriage vehicle licenses in addition to the current limits.

Applications were received from John Roberts, Lee Barks and Darren Dickson. Mr Roberts requested 14 plates (reduced to 13) and Mr Barks and Mr Dickson made single applications.

Mr Roberts was represented at the Committee meeting by Mr Angus Gloag Counsel Kings View Chambers. Mr Barks and Mr Dickson were not represented.

At the beginning of the hearing the Chair introduced the members of the Committee and the officers present, and asked the applicants to introduce themselves.

Mr Tully outlined the procedure which would be followed at the hearing and Mr Wheeler summarised the details set out in the agenda. He also reminded those present that the report was produced whilst having regard to the following documents:

Department of Transport Circulars 3/85 and 4/87

Department for Transport Best Practice Guidance 2006 with March 2010 revision

The Competition and Marketing Authority statement issued in April 2017

Mr Barks had prepared a written statement which was read out to Members. This made the following points:

1. The Council was legally bound to undertake an unmet demand survey every three to five years.
2. The Council had not done this.
3. The population had risen since 1985.
4. The Council had refused applications for hackney carriage licences in 2017 and 2018.
5. New companies such as Delta and Abba operating in the Borough demonstrated unmet demand.
6. District Taxis were taking many wheelchair user bookings every week.
7. There were only 21 (or 19) fully wheelchair accessible vehicles licensed in Halton.
8. Sure Start had repeatedly informed the Council about the massive shortages of fully wheelchair accessible vehicles.
9. The world has changed over 30 years and we now have an aging population.

Mr Gloag presented his case on behalf of his client Mr Roberts and made the following points:

1. He disagreed with paragraphs 2.4, 4.5, 6.1 and 6.2 of the printed agenda.
2. He commented on the allegedly non-existing policy limiting the number of hackney carriages.
3. There was no audit trail for the last unmet demand survey.

- 4. He went through the text of section 16 Transport Act 1985 and stated that the only way that the applications could be removed was if the Committee were satisfied that there was no unmet demand.
- 5. He did not agree with paragraphs 1 and 2 of Appendix A of the printed agenda as referred to at paragraphs 2.6.2 and 2.6.2 of the agenda.
- 6. Taking up the point made by Mr Barks about Sure Start he referred to an email of 1 June 2017.
- 7. He claimed that paragraphs 2.1, 2.2 and 2.6.3 of the agenda were deliberately foggy and that Appendix A paragraph 5 was a vague summary.

Mr Roberts claimed in the last 2 years he had 2000 calls per week from people who cannot get a wheelchair vehicle. He had 75 vehicles of which 36 are fully wheelchair accessible.

Mr Dickson was asked if he wished to address the Committee and he said he agreed with Mr Roberts that there is a lack of wheelchair accessible vehicles in Halton. He also confirmed that the statement read out by Mr Barks should be taken as a joint statement on behalf of Mr Barks and Mr Dickson.

The Committee asked a number of questions throughout the hearing. Mr Wheeler was asked about the email from Sure Start. He could not remember specifically this email and had been given no notice of it.

Mr Tully confirmed that the legal advice was that there was no legal obligation to carry out an unmet demand survey notwithstanding the circular advice to do this. The original policy of limiting the number of hackney carriages could no longer be challenged and the last unmet demand survey was presumably destroyed many years ago. Its findings were no longer relevant since the test in section 16 of the Transport Act 1985 had to be applied as at the date of the hearing.

Mr Gloag summed up their representations following which the Committee retired to consider the applications. At the conclusion of the Committee's considerations the parties re-assembled and the Chairman directed Mr Tully to read out the decision of the Committee.

RESOLVED: That

- 1. For the reasons set out in the report as amplified during the hearing the Committee is satisfied that there is no significant demand for the services of hackney carriages in the Borough which is unmet.
- 2. Nothing put forward by the applicants justifies a different conclusion; and
- 3. Consequently, the applications are refused.

Supporting documents:

- [Hackney Carriage Vehicle Applications - 28.11.2018 Final \(2\), item 15.](#)  PDF 103 KB
- [HCV Applications - 28.11.2018 \(Appendices\) Final, item 15.](#)  PDF 151 KB