



Committee and date  
Strategic Licensing  
Committee

1<sup>st</sup> December 2011

Item

6

Public

## **DRAFT POLICY FOR LICENSING OF HACKNEY CARRIAGES**

### **Responsible Officer**

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### **1. Summary**

- 1.1 There has recently been a significant increase in demand for taxi licences in Shropshire. A policy has been drafted to set out a clear position and procedure under which the Council will make its delegated decisions regarding hackney carriage applications where the intended use is not to ply for hire to a material extent within a Shropshire zone.
- 1.2 A consultation exercise has been undertaken and the draft policy has been amended for consideration by members. Further consideration and final decision on the policy is one for Cabinet to make.

### **2. Recommendations**

That the Committee:

- 2.1 Consider the responses to the consultation
- 2.2 Agree the final draft of the policy to be reported to Cabinet for its further consideration and final decision.

### **3. Financial Implications**

- 3.1 The Council should where possible recover the cost of delivering the taxi licensing service through its fees and charges. It is believed that some hackney carriage applicants are attracted to Shropshire Council due to its comparatively low licence fees.
- 3.2 Licensing sub-committee considered 33 applications on 17<sup>th</sup> and 26<sup>th</sup> October for hackney carriage applications where Officers had concerns that the intended use was not to ply for hire to a material extent within a Shropshire zone. 29 of those applications were approved subject to the applicants keeping records and 4 were refused.
- 3.3 As a result an intensive enforcement campaign is being organised to ensure that where licences are granted the drivers are plying for hire to a material

extent within the relevant Shropshire zone. As a result of this increased enforcement the licence fees will need to be increased to recover these additional costs and this matter will be considered separately by Strategic Licensing Committee at a later date.

#### **4. Background**

- 4.1 The number of both driver and hackney carriage vehicle applications has increased 400% over the last calendar year. The majority of these applications (80% of vehicles and 84% of drivers) are coming from applicants based outside of Shropshire.
- 4.2 It is expected that the majority of out of area applicants who have been granted a drivers licence will make applications for hackney carriage licences with Shropshire Council.
- 4.3 A hackney carriage is more commonly known as a taxi. It may advertise itself to be for hire and can be hailed in the street in the area of the council with which it is licensed. It can be hired from a taxi rank in the area of the council with which it is licensed.
- 4.4 Private hire vehicles must be pre-booked with a private hire operator and cannot be hailed in the street, or hired from a rank.
- 4.5 There are two quite separate regimes for the licensing of hackney carriages and private hire vehicles. The Town and Police Clauses Act 1847 makes provision for hackney carriage licensing. The Local Government (Miscellaneous Provisions) Act 1976 makes provision for private hire licensing and some additional provision for hackney carriage licensing.
- 4.6 A hackney carriage may only ply for hire within the area or zone of the council with which it is licensed. However, a hackney carriage is specifically exempted from the private hire vehicle licensing requirement and may accordingly be pre-booked to pick up and carry passengers for reward either within or outside the area of the relevant licensing authority.
- 4.7 Officers are concerned that the sudden and significant increase in applications with Shropshire Council do not all relate to a genuine intention to ply for hire within Shropshire. It is thought that some applicants are applying with the Council to take advantage of the exemption which then allows them to take bookings elsewhere in the country.
- 4.8 It is for these reasons that a policy has been drafted and consulted upon to set out a clear position and procedure under which the Council will make its delegated decisions regarding hackney carriage applications where the intended use is not to ply for hire to a material extent within a Shropshire zone.

## REPORT

### 5. Risk Assessment and Opportunities Appraisal

- 5.1 The regulation of hackney carriages dates back to 1847 and in many instances is the subject to time consuming and expensive court cases to the extent that the High Court has been required on many occasions to rule on local issues which often have national significance.
- 5.2 Northumberland County Council, which came into effect on 1<sup>st</sup> April 2009 following local government re-organisation, inherited a much publicised approach to the licensing of hackney carriages adopted by Berwick Upon Tweed Borough Council, commonly referred to as “out of town” hackney carriages. This matter was the subject of a High Court case Newcastle City Council v Berwick-Upon-Tweed Borough Council [2008].
- 5.3 The proliferation of “out of town” hackney carriages has been seen by the trade as an opportunity to provide private hire services with greater freedoms and flexibilities. These benefits have recently been challenged and were the subject of a High Court judgement Stockton-on-Tees Borough Council v Alan Fidler and others. The judgement confirmed that a hackney carriage is specifically exempted from the private hire vehicle licensing requirement and may accordingly be pre-booked to pick up and carry passengers for reward in a completely different district, anywhere in the country, with the exception of London. This has the potential effect of vehicles being used outside of their own districts in such a way that undermines the entire concept of local policies and conditions to support local control.
- 5.4 The operation and use of out of town hackney carriages in this manner must also increase the risk of illegal plying for hire. To identify such activities requires significant enforcement activities / test purchase exercises as unless problems are encountered it is unlikely that the public will report such activities.

### 6. Consultation

- 6.1 The Licensing team consulted with hackney carriage trade, neighbouring authorities and the police in relation to the introduction of a policy regarding out of area hackney carriage applications. The consultation took place between 12<sup>th</sup> September 2011 and 21<sup>st</sup> October 2011. The consultation asked for comments on all aspects of the policy.
- 6.2 During the consultation, 8 responses were received which are summarised as follows:
- 2 respondents supported the draft policy
  - 3 respondents supported the draft policy if it is amended to clarify that hackney carriages working only for a taxi firm in the ceremonial County of Shropshire will be licensed (i.e. to include Telford and Wrekin).
  - 3 respondents did not agree with the draft policy.

- 6.3 Shrewsbury Drivers Action Group were in full support of the draft proposal to question the validity of some applications by applicants that appear to be working remotely out of the area (or zone) and are using the area as an authority of convenience to avoid their home areas legislation and/or costs. The Group also stated that they hope the council will back this up with active enforcement on the streets particularly late at night when they continually see the arrival of other zone plated vehicles in Shrewsbury plying for hire.
- 6.4 Telford & Wrekin Council welcomed the policy on the whole. They requested clarification on what action the Council would take if information comes to light during the period of a licence that the vehicle is no longer working in the Shropshire area and whether the Council would wait for renewal of the licence before they would do anything about it. Amendments to the wording of the policy were suggested in line with the Berwick judgment to include “predominantly” when referring to the intention to ply for hire within a Shropshire zone.
- 6.5 County Cars of Telford operate up to 12 hackney carriages licensed by Shropshire Council which ply for hire in the Bridgnorth zone as well as undertaking work in the area of the ceremonial County of Shropshire. They recognise the need for a policy but would prefer it to say that “hackney carriages working only for a taxi firm in the ceremonial County of Shropshire will be licensed”. They commented that Shropshire Council would never have granted a licence for a vehicle to work from a taxi firm in the administrative area of Telford & Wrekin Council unless it was satisfied of its ability to monitor, control and regulate such a vehicle. They are of the view that the terms of the draft policy would still entitle Shropshire Council to licence vehicles as hackney carriages to work from their office. They urge the Council to expressly provide for the licensing of vehicles that are to be used only by taxi firms situated in the ceremonial County of Shropshire, so that such vehicles are not to spend a proportion of each week working significant distances from the area of the licensing authority.
- 6.6 Diamond Cars of Telford operate a fleet of company owned and driver owned vehicles licensed by Shropshire Council. They recognise the need for a policy but would prefer it to say that “hackney carriages working only for a taxi firm in the ceremonial County of Shropshire will be licensed”. They commented that Shropshire Council would never have granted a licence for a vehicle to work from a taxi firm in the administrative area of Telford & Wrekin Council unless it was satisfied of its ability to monitor, control and regulate such a vehicle. They are of the view that the terms of the draft policy would still entitle Shropshire Council to licence vehicles as hackney carriages to work from their office. They urge the Council to expressly provide for the licensing of vehicles that are to be used only by taxi firms situated in the ceremonial County of Shropshire, so that such vehicles are not to spend a proportion of each week working significant distances from the area of the licensing authority.
- 6.7 A response sent in separately by three individuals expressed disappointment at the consultation process. It is unclear whether these individuals currently hold a licence or who they represent. The three respondents believed that the draft policy is unacceptable and felt that hackney carriages should be able to

take pre-bookings from outside Shropshire. They feel that the Council is discriminating against drivers from outside Shropshire. They stated that consultation does not stress on everybody safety, taxi drivers' welfare and practical approach to the issues. They suggested that the Council can use funds to increase enforcement. They were strongly opposed to the draft policy as they believe it is unfair, irresponsible, against the economic welfare of the country and unrealistic approach to the matter.

- 6.8 A2Z Licensing responded on behalf of Ultimate Taxis Ltd, Telford which owns 12 hackney carriages licensed with Shropshire Council. A detailed split of work between the council areas of Shropshire, Staffordshire and Telford and Wrekin was provided. They would prefer the final policy to make it clear that hackney carriages working only for a taxi firm in the ceremonial County of Shropshire would be licensed. They state that there has been no change in the law since Shropshire Council determined to grant the first hackney carriage licence to a proprietor that it knew intended to a large extent to use that vehicle for pre-booked work in the area of the neighbouring councils of Telford & Wrekin Council and/or Staffordshire County Council. They hope that the proposal to adopt a policy is intended to address the influx of applications from areas remote from that of Shropshire Council, rather than to reverse an unwritten policy in relation to those areas that may be described as "neighbouring" that of Shropshire Council. They highlight and refer to the Law Commission's review that taxi and private hire licensing is now subject to.

## **7. Amendments to draft policy and response to issues raised through the consultation**

- 7.1 In response to comments in the consultation the policy has been amended to clarify:
- i Where a licence has been granted under the terms that the applicant intends to ply for hire to a material extent within a zone of the administrative area of Shropshire Council but is subsequently found not to be plying for hire to a material extent in a Shropshire zone and/or to be trading in another authority's area for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) there will be a presumption that the licence will be revoked. (paragraph 5.1 of the policy)
- 7.2 The policy will be backed up with active and targeted enforcement. Arrangements are also in place to work with neighbouring authorities to target enforcement resources effectively.
- 7.3 The policy relates to the administrative area of Shropshire Council and does not extend to the ceremonial County of Shropshire.
- 7.4 The Council is not discriminating against drivers from outside Shropshire. The policy is intended to set out a clear position and procedure under which the Council will make its delegated decisions regarding hackney carriage applications where the intended use is not to ply for hire to a material extent within a Shropshire zone.

7.5 The word “predominantly” has been used in the policy in line with the High Court guidance.

7.6 The policy has been reformatted and the amended draft policy can be found at Appendix 1.

## 8. Conclusions

8.1 To act lawfully, within the judgements given in case law and High Court judgments, Shropshire Council should establish an Intended Use Policy for the licensing of hackney carriages.

### **List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

- Town and Police Clauses Act 1847
- Local government (Miscellaneous Provisions) Act 1976
- Transport Act 1985
- Case law: Newcastle City Council v Berwick upon Tweed Council 2008.  
R v Weymouth Borough Council

### **Cabinet Member (Portfolio Holder)**

Cllr Steve Charmley

### **Local Member**

Covers all areas of Shropshire

### **Appendices**

Appendix 1 - Draft “Intended Use Policy for the Licensing of Hackney Carriages”

## APPENDIX 1

### Draft “Intended Use Policy for the Licensing of Hackney Carriages”

#### 1. Applications for the new grant of a hackney carriage licence

1.1 Applicants for new licences will be expected to demonstrate a bona fide intention to ply for hire within a zone of the administrative area of Shropshire Council under the terms of the licence for which application is being made.

1.1 There will be a presumption that applicants who do not intend to a material extent to ply for hire within a zone of the administrative area of Shropshire Council will not be granted a hackney carriage licence authorising them to do so. Each application will be decided on its merits.

1.2 Even where the applicant intends to ply for hire to a material extent in a Shropshire zone, if the intention is to trade in another authority’s area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

#### 2. Applications for the renewal of a hackney carriage licence

2.1 Applicants for renewals of licences will be required to inform the Council whether they have a bona fide intention to ply for hire within a zone of the administrative area of Shropshire Council under the terms of the licence for which application is being made.

2.3 There will be a presumption that applicants who do not intend to a material extent to ply for hire within the relevant zone of the administrative area of Shropshire Council will not be granted a hackney carriage licence authorising them to do so. Section 60 of Local Government Miscellaneous Provisions Act

1976 gives the Council a broad discretion to refuse to renew a licence for any reasonable cause. Each application will be decided on its merits.

- 2.4 Even where the applicant intends to ply for hire to a material extent in a Shropshire zone, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

### **3. Transfer of ownership – when a licensed vehicle is transferred from one person to another**

- 3.1 Section 49 of the Local Government (Miscellaneous Provisions) Act 1976 requires that the proprietor of the licensed vehicle who transfers his interest to another must, within 14 days of the transfer, give written notice to the Council of the name and address of the transferee of the hackney carriage. The Council has no power to refuse to register the new proprietor: see *R v Weymouth Borough Council, ex p Teletax (Weymouth) Ltd* [1947] KB 583.

- 3.2 Provided requisite notice has been given in accordance with section 49 of the Local Government (Miscellaneous Provisions) Act 1976 the Council will register the transferee of a licensed hackney carriage as the new proprietor. This is a legal requirement.

- 3.3 The transferee of a licensed hackney carriage will be asked to inform the Council whether he has a bona fide intention to use the vehicle to ply for hire within a zone of the administrative area of Shropshire Council. Transferees should note the obligation under section 73 of the Local Government (Miscellaneous Provisions) Act 1976 to give to an authorised officer information which may reasonably be required by him for the purpose of carrying out his functions under the legislation. Where there is a failure to provide the requested information, the Council will give serious consideration to exercising its powers of suspension of the licence under section 60 of the 1976 Act until such information is forthcoming, in addition to its powers under section 73.



- 3.4 Transferees of existing licences will be expected to have a bona fide intention to ply for hire within a zone of the administrative area of Shropshire Council under the terms of the licence in respect of the vehicle being transferred.
- 3.5 Where the transferee of a licensed hackney carriage is found to have no intention to ply for hire to a material extent within a zone of the administrative area of Shropshire Council and/or intends to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular case, consideration will be given (either at renewal or earlier) to the suspension or revocation of the licence under section 60 of the 1976 Act. Where the transferee proposes to operate remotely from the administrative area of Shropshire Council there will be a presumption that his licence will be revoked. Each case will be decided on its merits.

#### **4. Change of vehicle – when a proprietor replaces a licensed vehicle**

- 4.1 Applicants seeking the grant of hackney carriage licence for a vehicle intended to replace another licensed vehicle will be asked to inform the Council of their intended use of the vehicle. There will be a presumption that applicants who no longer intend to ply for hire to a material extent within a zone of the administrative area of Shropshire Council will not have the new hackney carriage licence granted. Even where the applicant intends to ply for hire to a material extent in a Shropshire zone, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular case, there will be a presumption that the application will be refused.

#### **5. Revocation of licence**

- 5.1 Where a licence has been granted under the terms that the applicant intends to ply for hire to a material extent within a zone of the administrative area of

Shropshire Council but is subsequently found not to be plying for hire to a material extent in a Shropshire zone and/or to be trading in another authority's area for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) there will be a presumption that the licence will be revoked.

## **6. Exceptional circumstances**

6.1 Each application will be decided on its merits. However the presumptions that intended use is to ply for hire to a material extent within a zone of the administrative area of Shropshire Council will be rebuttable in exceptional circumstances. Whilst it is neither possible nor prudent to draw up a list of what might amount to exceptional circumstances, an applicant who claims that exceptional circumstances exist will be expected to be able to satisfy the Council that it would not frustrate the purposes of the legislation or compromise public safety if the licence were granted, renewed or if were not suspended or revoked as the case may be.

## **7. Reasons for Policy**

7.1 The Council wishes to ensure that applications for the grant of hackney carriage licences are determined in accordance with the guidance given by the High Court in its judgment, and the Declaration made in the case of Newcastle City Council v Berwick upon Tweed Council [2008].

7.2 The Council is required to register the name of the new proprietor of a vehicle. It seems to the Council also to open up an obvious route to circumvent the decision of the High Court, unless precautionary steps are taken. Section 3 is intended to put the Council in a position to respond responsibly to the transfer of a Shropshire hackney carriage into the name of someone who operates outside the Shropshire Council zone or remotely from it.

7.3 Unless there has been a change in the proprietor's intentions with regard to plying for hire within a zone of the administrative area of Shropshire Council,

there should be no reason why he should not be granted a licence for a replacement vehicle. On the other hand, an applicant who obtained his first licence on the expressed intention of plying for hire to a material extent within a zone of the administrative area of Shropshire Council, and who on application to replace that vehicle with another discloses that he no longer so intends, effectively engages the presumption against grant that is mentioned earlier.