



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Overview & Scrutiny Committee

Wednesday, 28 March 2018
6.00 pm
Pittville Room - Municipal Offices

Membership	
Councillors:	Tim Harman (Chair), Jon Walklett (Vice-Chair), Colin Hay, Alex Hegenbarth, Sandra Holliday, Chris Mason, Helena McCloskey, John Payne, Paul Baker and Max Wilkinson

The Council has a substitution process and any substitutions will be announced at the meeting

Agenda

1.		APOLOGIES	
2.		DECLARATIONS OF INTEREST	
3.		MINUTES OF THE LAST MEETING 26 February 2018	(Pages 3 - 18)
4.		PUBLIC AND MEMBER QUESTIONS These must relate directly to the business for which the meeting was convened and must be received no later than 12 noon on Thursday 22 March 2018	
5.		CALL-IN OF DECISION REGARDING THE REVIEW OF THE TAXI AND PRIVATE HIRE LICENSING POLICY Consideration of a call-in request regarding a decision made at Cabinet on 6 March 2018 <ul style="list-style-type: none"> • Introduction by the Chair, who will speak on the call-in request • Questions to the Cabinet Member Development and Safety, Councillor Andrew McKinlay • Questions to the Business Support and Licensing Team Leader, Louis Krog • Questions to the representative of The National Private Hire and Taxi Association (tbc) • Questions to the Chairman of the Licensing Committee, Councillor David Willingham • Conclusions and agree recommendations 	(Pages 19 - 82)

6.		DATE OF NEXT MEETING 23 April 2018	

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Overview & Scrutiny Committee

**Monday, 26th February, 2018
6.00 - 8.40 pm**

Attendees	
Councillors:	Tim Harman (Chair), Jon Walklett (Vice-Chair), Colin Hay, Sandra Holliday, Chris Mason, John Payne, Paul Baker and Max Wilkinson
Also in attendance:	Martin Chandler (Development Manager), Councillor Coleman (Cabinet Member Clean and Green), Gareth Edmundson (Ubico), Richard Gibson (Strategy and Engagement Manager), Peter Hatch (CBH), Councillor Jordan (Leader), Wayne Lewis (Joint Waste Team) and Paul Stephenson (CBH)

Minutes

1. APOLOGIES

Councillors McCloskey and Hegenbarth had given their apologies. Councillor Holliday arrived at 6.55pm and Councillor Wilkinson excused himself at 8.10pm.

2. DECLARATIONS OF INTEREST

No interests were declared.

3. MINUTES OF THE LAST MEETING

The minutes of the last meeting had been circulated with the agenda.

Upon a vote it was unanimously

RESOLVED that the minutes of the meeting held on the 22 January 2018, be agreed and signed as an accurate record.

4. PUBLIC AND MEMBER QUESTIONS, CALLS FOR ACTIONS AND PETITIONS

None had been received.

5. MATTERS REFERRED TO COMMITTEE

No matters had been referred to the committee.

6. CBH MASTERPLAN

The Chairman reminded members that the committee had previously decided that it wanted to give consideration to undertaking some form of scrutiny of the indices of deprivation. The Lead Members had decided that before making a decision on if and how to scrutinise this issue, the committee should first hear from CBH with regard to the 'Masterplan' that they were currently developing, and what it could do to address some of the issues. He noted that the committee would also hear from the Communities Partnership at a future

meeting, to hear about the work they were doing to address issues relating to the indices of deprivation.

Paul Stephenson, Chief Executive and Peter Hatch, Executive Director - Properties and Communities, of Cheltenham Borough Homes (CBH) introduced themselves to the committee. Paul Stephenson thanked the committee for providing the opportunity to present details of the project, which commenced in September 2017 and would culminate in a completed masterplan by July 2018, and which represented a significant piece of work for CBH.

Nash Partnerships, independent consultants specialising in community engagement in planning and regeneration and the architects responsible for the St. Pauls regeneration scheme, were appointed to undertake the consultation. The feedback from this consultation, along with the comprehensive financial analysis for each of the 14 sites, could result in 4 to 5 options which supported the project outcomes (as detailed in the pictorial which had been circulated with the agenda) and whilst housing was a large part of this, the socio-economic benefits were a key element. This project required a collaborative approach and with this in mind, a Programme Board had been established with Tim Atkins, Managing Director of Place and Economic Development at CBC, having been appointed as Chairman. Because this project was not simply about housing, Nash Partnerships were undertaking a lot of work on other areas including health and employment and there was a wide range of partnership involvement. Improving the indices of deprivation was the integral benefit of the project, which would need to improve in order to demonstrate success, but these were long-term proposals which would take some years to deliver. It was suggested that quarterly updates would be made available to members and there was a request that CBH be given the opportunity to make a more detailed presentation to members in the Autumn.

The following responses were given to member questions:

- As yet there had been no further detail regarding eligibility in relation to the proposed increase to the borrowing cap of local authorities to allow for increased development of new housing. The expectation was that this would be included in the impending green paper on social housing, which was expected to be published in Spring 2018. However, given the property prices and the cost of land in Cheltenham it was assumed likely that CBC would indeed be eligible. CBH had attended a meeting with Homes England at which it had made clear its interest to explore the viability and CBH were maintaining a watching brief on this.
- Resources were not an issue for the project at this stage, with CBH having appointed a Project Manager. However, more resources would certainly be required after July 2018, but CBH did not anticipate that this would be a problem as they would simply up-scale resources; the cost of which would be included within the cost of a particular scheme, which incidentally, would also cover the cost of consultants, architects, etc.
- A consultant had recently commented that they had not previously encountered customer satisfaction at the level that CBH Repairs was achieving and this, in part, had lead CBH to increase the level of work done in-house (including kitchen and bathroom replacements which were previously undertaken by a contractor). CBH had recently visited Nottingham City Council, an ALMO which had an in-house development

arm and this was something to which they were giving consideration and a likely timescale for a decision on this would be 12 to 18 months. It was noted that establishing links with Gloucestershire College and providing local employment opportunities would arise from the Masterplan project.

- Consideration was being given to all tenure types and it could be that some schemes would need to include freehold properties in order to ensure the overall viability of the scheme.

A member stressed the importance of capturing some measure of where people in an area of deprivation achieve better education and work outcomes as a direct result of any regeneration works, but where these people then subsequently go on to leave the area, resulting in levels of deprivation seemingly remaining unchanged. The Chief Executive commented that the dilemma that had been described was a dilemma that faced all regeneration projects. Evidence of this would need to be captured and this would only be possible by having undertaken sufficient research and data gathering at the outset. Diversification of housing tenure and type would play a role in addressing this also, and it was important to CBH that regeneration of any given area was real and sustainable, resulting in a positive human outcome, as well as other socio-economic benefits.

The Chairman thanked the Chief Executive and Executive Director for their attendance and on behalf of the committee accepted the offer of a detailed presentation later in the year.

7. DRAFT PLACE STRATEGY UPDATE

Richard Gibson, the Strategy and Engagement Manager introduced the update as circulated with the agenda and the draft Place Strategy which was starting to take shape. With the final draft scheduled to go to Council at the end of March, it was considered timely to seek the views of the committee, on the changes that had been made since the committee last looked at it in January. Efforts had been made to simplify the framework and condense the vision, to which three ambitions had been aligned (Cheltenham is the most digitally enabled town, Cheltenham champions physical and mental wellbeing and Cheltenham has an international reputation for culture, heritage and sport). He noted that the four values had been retained, which he and other officers had felt was important and the document was deliberately short, with an open and accessible style, in order that it would not be seen as a weighty policy document.

The following responses were given to member questions:

- The reference to 'mental wellbeing' had been used in its broader definition rather than simply relating to clinical mental health. The recent study in Frome was given as an example of where connecting people and reducing social isolation, amongst other things, had helped to improve people's mental wellbeing.
- The Place Strategy was a partnership document rather than a CBC document and the ambition around an international reputation for culture, heritage and wellbeing was important to all partners. Cheltenham certainly had an international reputation for horse racing but this needed to be translated into other areas and the Tour of Britain represented an attempt to do this. There was something around

capturing and harnessing the energy and possibilities, rather than this being something for the council to deliver directly.

- Education was captured in one of the nine aspirations and there was agreement across partners that Cheltenham had a state and private education offer to be proud of. But there was admittedly a skills gap and more needed to be done to address this at the same time that work was ongoing to co-ordinate this to respond to the expected growth in terms of cyber/digital skills.
- Whilst recognising that economic growth was hugely important in order to allow culture and communities to grow and prosper, there was a need for this document to be balanced and to progress all three ambitions together. The Corporate Strategy would contain specifics about what this council would be doing to support these ambitions and this might be the place to highlight particular priorities.
- Although some might feel that certain aspects of Cheltenham (for example the 'supply of business space') were being undersold in this document, there was a need for honesty in terms of areas where there was the desire or need to invest. It was acknowledged that the University were critical to enabling the success of some aspects of this strategy and members could be assured that links had been established.
- The point about the document appearing insular as a result of there being nothing about the town's relationship with the county or neighbouring towns and cities was an important one, and would be addressed before the document was taken to Cabinet.

The Strategy and Engagement Manager highlighted that the Corporate Strategy was usually tabled with this committee at this time each year but due to various other pressures, this had not been possible. The intention was that this year, the Corporate Strategy would be relatively light-touch and simply reiterate existing commitments, with a more developed strategy being devised in July, after the elections.

The Chairman thanked the Strategy and Engagement Manager for his attendance.

8. LEISURE@ PROJECT

Mark Sheldon, the Director of Resources and Corporate Projects and Richard Gibson, the Strategy and Engagement Manager introduced the discussion paper as circulated with the agenda. Members were reminded that in December 2017, Council had agreed a £2.5 million scheme to revitalise Leisure-at Cheltenham, as well as a revised approach to the project management of the scheme, with the council contracting Alliance Leisure Services (ALS) to deliver the project on their behalf. Paragraph 2.4 of the paper outlined the advantages of this approach and paragraph 3-3.11 detailed the governance arrangements that had been put in place. It was highlighted that, in recognition that this represented a significant project for CBC which was not without some risks; a client-side Project Manager had been appointed. The Director of Resources and Corporate Projects explained that a lot of work had been done upfront in terms of cost development, which had resulted in a fixed price being agreed, though there was various contingency budgets to address any unforeseen issues. Highlight reports would be considered by the Senior

Leadership Team as well as the Joint Commissioning Group (JCG) and the JCG had also asked for regular reports on any variances.

The following responses were given to members:

- The council had entered into a fixed-price contract with ALS, who in turn had contracted with Savernake Property Consultants (SPC) to co-ordinate project on behalf of ALS. The council had spent a significant amount of time with ALS to fully understand what cost-certainty actually meant but given the set of risks that accompanied the Council report, it was considered prudent to appoint a client-side Project Manager. The £30k was a provisional sum, to allow the Project Manager, Jane Stovell, to dedicate 1 day a week to co-ordinate and maintain an overview of the project.
- The build programme was relatively short, at 20 weeks and the suggestion was that the Audit Committee might want to undertake a review of the approach once works had been completed.
- A contingency of c.5% had been set aside which included £35k having been retained for any cost over-runs with the piling work. Work would be completed and signed off before any payments were made and ultimately Savernake were contracted to ALS, not the council, should there be a problem.
- There were no escrow arrangements and the justification for this decision would be emailed to members for information.
- The Project Initiation Document (PID) had been drafted at the outset but needed to be revisited to reflect the client-side arrangements and once this was completed, a copy would be circulated to members by email.

The Chairman thanked both the Director of Resources and Corporate Projects and the Strategy and Engagement Manager for their attendance and looked forward to receiving emails regarding the justification for deciding having any escrow arrangements and a copy of the finalised PID.

9. RESPONSE TO ISSUES RAISED BY THE CHELTENHAM FLOOD AND DRAINAGE PANEL

Martin Chandler, the Development Manager introduced the officer response which had been circulated with the agenda. He reminded members that the Cheltenham Flood and Drainage Panel had given a presentation to the committee in November 2017 and in response to this, the committee had posed three questions to officers: could comprehensive training be arranged for officers and members of the Planning Committee on flooding and drainage issues; could officers outline the Council's responsibilities in terms of planning, and; could officers explain if and how the panel could be given the same status as the Civic Society and Architects' Panel. The paper set out, in detail, the Council's responsibilities, as well as the responsibilities of the Lead Local Flood Authority which was GCC. In response to the question of giving the panel the same status as the Civic Society or Architects' Panel, he urged caution in the first instance, given that these bodies had been recognised in the Constitution given their ability to provide design advice in the absence of a statutory consultee. His suggestion was that the panel engage with the GCC as the LLFA to improve lines of communication. In terms of the officer and Planning

Committee member training, he was able to confirm that the date had been set for 6pm on the 9 April.

Councillor Baker, as the member who had made the original request for a presentation from the panel thanked the Development Manager for what he considered to be a very comprehensive report. However, he maintained the view that the panel should be given the same status as the Civic Society, and noted that as a member of Planning Committee, he could think of two recent instances where their input would have been helpful.

The Chairman thanked the Development Manager for having produced such a detailed response and whilst he welcomed news that a training date had been scheduled, he did feel that it may be necessary to repeat it after the elections, should new members be appointed to the Planning Committee. He also requested that the Development Manager make the necessary arrangements for the panels initial meeting with the LLFA.

10. WASTE & RECYCLING PERFORMANCE FOLLOWING SERVICE CHANGE

The Chairman introduced Gareth Edmundson, Managing Director of Ubico and Wayne Lewis of the Joint Waste Partnership (JWT) and explained that Councillor Coleman, Cabinet Member for Clean and Green Environment and Tim Atkins, Managing Director of Place and Economic Development were on hand to answer any questions.

Wayne Lewis provided a brief overview of initial waste and recycling performance following the launch of the new service in October 2017, which saw the introduction of new vehicles, new collection rounds and a wider range of recyclable materials. He felt that at this early stage it was difficult to form a judgement as to whether it had been successful or not and that this had been further complicated by the two instances of adverse weather. However, compared with the previous service, recycling had increased and was likely to exceed the modelled 2%, but this was not to say that there had not been some service issues. Crews had struggled to complete some rounds and this was due to the volume of recycling being presented and inconsistent sorting of materials by some residents, which resulted in rounds taking longer than they should. Some temporary additional resource had helped to resolve the issues and work was now ongoing to understand how to address this going forward.

Gareth Edmundson introduced a PowerPoint presentation (Appendix 1) which he hoped would explain some of the issues. He stressed that failure to complete was not the same as a missed collection as a result of crew error and explained that these failures to complete were a consequence of the volume of recycling being presented at kerbside and inconsistent sorting of materials. Having gone out on a shift himself, he'd seen first-hand that whilst entire row of houses could have sorted their recycling very well, the next row of houses may not have separated it at all and explained it could take almost double the time to complete a collection when the materials were unsorted. This was relevant because crews had a finite time in order to complete rounds and Ubico had no choice but to recall crews back to Swindon Road by 5pm so as not to break regulations and risk being reported to the Traffic Commissioner and or health and safety regulations relating to working in the dark. This meant that some rounds had to be rolled forward to the next collection day and there would have been some residents who would have had repeat instances of collections on

different days to those which had been communicated to them. Narrow access streets is an historical issue and whilst advice was sought from existing users of Romaquips and Ubico operatives and drivers, to inform procurement, there was a balance that needed to be achieved between having vehicles that enabled service to all roads and buying the minimum number required to provide the flexibility and capacity required. To address the issue of non-completion of rounds, two additional vehicles have been added and have specific rounds and data was being collected and rounds adjusted to ensure that the service was as efficient as it could be. A business case will be presented back to CBC commissioners for review and decision once Ubico are confident the rounds have settled. The net additional cost of the new service would only be known once collection and recycle levels had settled but the original cost estimated in the December 2016 agreed Cabinet report was between £146k and 350k.

Responses had been provided to questions received in advance of the meeting. See table below.

1.	Question from Councillor Baker
	What impact has the expansion of the kerbside recycling service had on recycling rates across the town?
	<i>The expansion of the kerbside recycling service has had a positive impact on recycling rates. A month on month comparison of October to Dec 2016 to 2017 shows an increase to the monthly recycling percentage of 4% for October and 1.7% for both November and December. This should add between 1 and 2% to the annual (NI192) recycling rate, despite the service change only taking place in October. If this positive trend continues, then the full-year impact should be an increase of 2% or more to the council's recycling rate.</i>
2.	Question from Councillor Baker
	Some towns do not sort recycling at the kerbside as we do. Does this still mean we get a better price and does it also mean we will be better protected from the likely impact of the decision by China to stop taking our recycled plastics?
	<i>The prices obtained by council's for recyclable materials can be influenced by a number of factors such as timing of agreements, terms of sale, the volume of material sold, the council's location and the quality of the material sold. In general though, having well separated, good quality materials means that better prices can be obtained and also helps to ensure that materials can continue to be recycled when poor market conditions (such as those resulting from the Chinese restrictions) are encountered.</i>
3.	Question from Councillor Baker
	Has the expanded service created any customer service issues? If so how have these been resolved?
	<i>Difficulties in completing rounds clearly increased the volume of telephone queries received by customer services but volumes have returned to normal now.</i>

The following responses were given to member questions raised at the meeting itself:

- Wayne did not feel that Autumn was a bad time of year to launch a new service and noted that the severe weather conditions could not have been predicted. From Ubico's perspective, there were questions around the running and maintaining the previous fleet, which was very old. Ubico couldn't have predicted the severe weather but were in the process of looking at how this risk will be managed going forward.
- The mobilisation of vehicles was a complex process. Drivers were not asked to take a vehicle down a street if they did not feel safe in doing so but this clearly depended on the knowledge and experience of the particular driver. If Councillor Walklett could give specifics about which streets previously had smaller vehicles and are now seeing larger vehicles undertaking collections, then Gareth could look into the issue for him.
- Income would increase in line with the amount of recyclate being collected and income in the form of recycling credit from GCC but this would be offset by the additional cost of the new service and may not cover it.
- Smaller vehicles had been deployed to resolve narrow access properties to resolve access issues.
- After the adverse weather co-mingling of recycling enabled crews to make additional collections more quickly but it had been made clear to crews that the commissioner (CBC) had to give permission for this and Gareth would be interested to know what streets residents claimed to be witnessing co-mingling on a regular basis so that he might investigate further. It was noted that some recycling was co-mingled and then sorted manually. Overall, co-mingling of recycling should happen very rarely but the incidence was higher across December and January to enable the crews to cope with the adverse weather.
- Residual waste had decreased and figures would be circulated to members by email.
- Cameras were fitted to the new vehicles.
- Ultimately more vehicles meant more cost and a blend of vehicles was required to do the job. Smaller vehicles clearly had less capacity and required more frequent trips to unload which increases costs.
- Wayne felt that waste was an important consideration for planning as planning decisions could create future waste collection problems. Gareth was interested to know which development had been permitted with the condition that the developer had to find a private company to undertake the waste collections.
- The JWT/Ubico were aware of communal waste and where residents used black bags rather than bins and could agree these properties were given a priority as part of the emergency planning procedure, in acceptance that missed collections posed more of an issue for these residents than those with bins.
- Given the level of communications about the new service, the spike in recycling was not unexpected but there would need to be ongoing communications to maintain current levels. It would be possible to use intelligence relating to tonnage to focus messages to particular areas

and another option was to analyse where general waste included recyclable materials.

- Food waste was reducing, generally people found this messier and therefore it was important that this message was reinforced regularly.
- The JWT regularly reviewed what approaches proved successful in other areas and why.
- Home composting bins were available to purchase from the recycle for Gloucestershire website at a subsidised rate and Master Composters were on hand to give advice to residents and/or groups. Waste Doctors and multi-language leaflets were not something that had yet been considered.
- Wayne stated that it was often the case that areas with a higher turnover of residents tended to achieve lower recycling levels compared to areas with a more settled population.
- There was an established Adverse Weather Protocol which involved an assessment of the conditions first thing in the morning. The only decision reserved for Ubico in adverse weather is whether or not it was safe for crews to carry out collections. If collections are suspended the council are provided with a range of catch-up options to make a decision. It was fully appreciated that continued disruptions proved frustrating for residents and decisions to suspend collections were regularly reviewed but it was unfortunate nature of the business that service had to be suspended if crew safety was in question.
- Supervisors capacity to respond to issues was reduced during and after the adverse weather as they were supporting the service.
- Details of non-completions are reported at the end of each day and these are prioritised for the next day and whilst Ubico did not rely on residents reporting 'missed collections', this was useful for Ubico. They were pleased to report that there had failure to complete had been resolved by the provision of extra vehicles.
- There were some streets where confusion over maps and which route they were included in lead to missed collections and the difficulties to complete other rounds had compounded the issue. Gareth apologised to residents who had been impacted by issues and expressed his hope that as the service continues to settle the small numbers of residents affected will regain their confidence in the service.
- A number of members, including two members of the public commended Ubico for the service that they provided, which despite some missed collections, they felt was of an excellent standard.

There were no questions for the Cabinet Member Clean and Green Environment.

The Chairman thanked Gareth Edmundson and Wayne Lewis for their attendance and wished Ubico well over the next week or so, given the bad weather which was being forecast.

11. FEEDBACK FROM OTHER SCRUTINY MEETINGS ATTENDED

An update on the recent Police and Crime Panel meeting had been circulated with the agenda and the update on the recent meeting of the Gloucestershire Economic Growth Committee (Appendix 2) had been circulated to members, by

email, in advance of the meeting. As neither author was present, members were asked to contact them directly with any comments or questions.

12. CABINET BRIEFING

The Leader referred members to the briefing which had been circulated with the agenda. In it he had posed two questions to the committee; did O&S want further input into the Arle Nursery Strategic Review before the report was taken to Cabinet, and; did O&S have any views on the issue of scrutiny of Publica.

The committee were happy for the Arle Nursery Strategic review to be scheduled on the agenda for the next O&S meeting (23 April).

Given that there would be an annual stakeholders' meeting, the suggestion from the committee was that the Leader, as the shareholder representative, should communicate to all members, any upcoming decisions, giving said members the opportunity to raise any questions in advance.

In response to a member question, the Leader confirmed that the council had an enhanced Severe Weather Emergency Protocol (SWEP), with provision after one night of the temperature dropping below zero, where others required three consecutive nights. The charity P3 would proactively identify rough sleepers across the county to ensure that they had a warm bed for the night.

13. REVIEW OF SCRUTINY WORKPLAN

The scrutiny plan had been circulated with the agenda. In response to matters raised during the meeting or by members, the Democracy Officer confirmed that:

- The Arle Nursery Strategic Review would be scheduled for the 23 April meeting but officers would need to confirm that this fit with the current project timetable.
- As stated at the last meeting, a response to the Select Committee report on scrutiny was being tabled with the Corporate Governance Group and Lead Members for scrutiny would then give consideration to if and how a review should be undertaken, but this would be after the upcoming elections so as to get fresh perspective from new members.
- An update on the issues at the crematorium would be scheduled for the next meeting (23 April).
- The reason a briefing note had been produced on the sound system, rather than a discussion paper, was because the tenders had not yet been evaluated. The Democracy Officer would raise the issue of member involvement in this process (beyond that of the working group which had been established) and agree an acceptable approach with the lead members for scrutiny.

A member felt that briefing note on the sound system seemed to suggested that the council had already decided to take the cheapest, most basic option and he questioned the logic behind this decision. He felt that it was worth spending more if this could result in the need for less, resources in support of the democratic process. Another member disagreed and felt that the council should not be spending money on a new sound system in a building which it intended to vacate in 6 years.

14. LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION

Upon a vote it was unanimously

RESOLVED that in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining agenda items as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraph 3, Part (1) Schedule (12A) Local Government Act 1972, namely:

Paragraph 3; Information relating to the financial or business affairs of any particular person (including the authority holding that information)

15. EXEMPT MINUTES OF THE LAST MEETING

The exempt minutes of the last meeting had been circulated with the agenda.

Upon a vote it was unanimously

RESOLVED that the exempt minutes of the meeting held on the 22 January 2018, be agreed and signed as an accurate record.

16. DATE OF NEXT MEETING

23 April 2018

Tim Harman
Chairman

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Overview & Scrutiny CBC Service Update



Overview

- ❖ December 6th 2016 Cabinet gave approval for a re-designed service.
- ❖ Cabinet Agreed Option 2A which included:
 - ❖ Fortnightly kerbside-sort recycle collection with expanded range of materials collected
 - ❖ Fortnightly refuse
 - ❖ Fortnightly paid-for garden waste service
 - ❖ Weekly food waste
- ❖ Cabinet paper highlighted that the model was based on a 2% increase in recycling overall, once the service had settled.
- ❖ Estimated a best and worse case scenario of £146K - £305K of additional cost



Service Launch - Operations

- ❖ Overall, crews learned their new rounds well, however, enquiries and reported missed collections were higher than average as expected due to the new service
- ❖ However, key challenge was:
 - ❖ the volume of recycling presented
 - ❖ inconsistent sorting of recycling material, sorted into a larger vehicle
- ❖ This resulted in recycling rounds being not able to complete on some days.



Failure to Complete Recycling Rounds

- ❖ Failure to complete (leaving roads uncollected) is not the same as a missed bin as a result of crew error.
- ❖ Collection crews have a finite time in order to complete rounds and are restricted by driver hours available and hours of daylight.
- ❖ Ubico has no choice but to get crews back to Swindon Road by 5pm (this means we call them back at 4-4.15pm to tip), to ensure that:
 - ❖ we do not break regulations and are reported to the Traffic Commissioner
 - ❖ or health and safety regulations on working in the dark.

This resulted in some rounds having to roll forward to the next collection day.



Narrow Access

- ❖ Cheltenham has a number of roads that are extremely challenging to access.
- ❖ Advice was sought on vehicle procurement from existing users of Romaquips to inform the specification.
- ❖ Assessed by existing operatives and drivers to inform procurement
- ❖ There is always a balance on buying new vehicles to buy the minimum number required to provide the flexibility and capacity to provide a service to all roads.
- ❖ Some roads, e.g. Bloomsbury street, remain extremely challenging to access and some roads have had to be reassigned and narrower vehicles used.



Measures

- ❖ 2 additional recycling vehicles have been mobilised to accommodate the additional material and have been given dedicated rounds. As a result this has delivered a more consistent service
- ❖ Data is being collected, rounds are being adjusted and a business case is being developed to explore efficiencies and provide further options to CBC
- ❖ The net cost of the new service will only be known when collection and recycle levels settle.



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Gloucestershire Economic Growth Scrutiny Committee

Report for O&S – 26 February 2018

Thursday 22nd February was the second in the series of outvisits, this time to The Cotswolds. Remember, we will be coming to Cheltenham in October.

The format was the same, with the home district starting proceedings with a 30 minute presentation on the Cotswolds Local Plan. Their plan is further advanced than Cheltenham, it has been approved by the Inspector for some months now.

To be honest, the Scrutiny group was rather underwhelmed. I felt that The Cotswolds was relying on its pre-eminent tourism reputation. (In terms of brand recognition, the top three places in the UK, by a considerable margin over the rest, are London, The Cotswolds, Stratford Upon Avon.)

There was some disquiet amongst the Cotswolds councillors, that they had a plan, but there was no action to make anything happen. The rest of the meeting was taken up with questions from Cotswolds councillors' to the G First LEP.

I had the sense that about a dozen members of the Scrutiny group had simply facilitated a meeting between The Cotswolds and G First LEP. I wasn't overly impressed with the Cotswolds Local Plan, it seemed very parochial. There was no mention of Vision 2050 or of partnership working. Their plan did have a SWOT. I saw no evidence that Cotswolds had looked at their weaknesses and then tried to find neighbours with compensating strengths or that they were pro-actively offering their strengths and opportunities to others to work together.

Tewkesbury were bullish, outgoing and keen to play their part in developing Gloucestershire. By contrast Cotswolds seemed very introspective and not taking ownership of their problems. Moaning to us about fly-tipping was a case in point.

I don't really want to say more until the group has had a proper chance to review the meeting which it will do at the next meeting in March.

All the above said, I do feel I am getting a far better appreciation of the various Districts in Gloucestershire and their strengths and weaknesses.

Councillor P McCloskey

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Information/Discussion Paper

Overview and Scrutiny Committee

28 March 2018

Call in – Review of taxi and private hire licensing policy

This note contains information to assist Members in dealing with this call in request.

1. Why has this come to scrutiny?

- 1.1 A call-in request was received from the Chairman of the Overview and Scrutiny Committee on 15 March 2018 relating to the decision made at Cabinet on 6 March 2018 regarding the review of taxi and private hire licensing policy. The request (attached as Appendix 1) was received within the call in period. The request was received by the Proper Officer, in accordance with the procedures set out in Part 4D – Overview and Scrutiny Rules – Rule 14 (attached as Appendix 2). The Proper Officer agreed that it was a valid call in request.
- 1.2 Under the rules of call-in, the request must be considered at a meeting of the O&S committee within 10 working days. After consultation with the chair of O&S and the Leader and Cabinet Member, a date of 28 March was agreed.
- 1.3 Having considered the facts of the call-in and having received any representations from the member(s) who submitted the request and the decision maker, the options for O&S are set out in paragraphs 14.13 of the Rule 14 in the Constitution (attached as Appendix 2)

2. Summary of the Issue

- 2.1 Members are referred to the Cabinet report on the review of taxi and private hire licensing policy which went to Cabinet on 6 March 2018 together with the (draft) minutes of that meeting and the decision made. These are attached as Appendices 3 and 4.
- 2.2 Members are also referred to the call in request attached as Appendix 1.

3. Summary of evidence/information

- 3.1 The Chair will outline the reasons why he felt a call in was appropriate.

Members of O&S have requested the following witnesses to attend:

Cabinet Member Development and Safety – Councillor McKinlay
Business Support and Licensing Team Leader – Louis Krog
A representative of The National Private Hire and Taxi Association
Chairman of the Licensing Committee – Councillor Willingham

- 3.2 The witnesses have been advised of the potential line of questioning and this is attached as Appendix 5. These are intended to provide the broad line of questioning

to assist the witnesses in their preparation but members may wish to ask additional questions on the night.

4. **Next Steps**

- 4.1 The possible next steps for the committee are set out in detail in Appendix 2 of the Overview and Scrutiny rules 14.13.

In summary the options are to:

1. Support the decision
2. Make adverse comments on the process but not the decision itself in which case the decision can be implemented.
3. Propose an alternative decision or modifications and delay the implementation until those have been considered by Cabinet.
4. In exceptional circumstances refer the decision to Council for review or scrutiny

Appendices	1 – Call in request (including letter of representation from The National Private Hire and Taxi Association) 2 – Rule 14 of the Council’s Constitution 3 – Cabinet report – 6 March 2018 4 – Extract from the minutes of Cabinet (6 March 2018) 5. – Line of questioning for the meeting (to follow)
Background Papers	Cabinet report appendices (6 March 2018)
Contact Officer	Rosalind Reeves, Democratic Services Manager, 01242 77 4937, rosalind.reeves@cheltenham.gov.uk
Accountability	Cabinet Member Development and Safety

Calling-In Form

Please refer to the Overview and Scrutiny Rule 14 in the Council's Constitution for a full explanation of the call in process.

Please give the name(s) of the member(s) wishing to call in the item. If the member calling in is the Chairman of the Overview and Scrutiny committee then only their name is required.

Councillor	Tim Harman, Chairman of Overview and Scrutiny Committee
Councillor	
Councillor	
Councillor	

Which item do you wish to call-in?

Decision maker	Cabinet e.g. Cabinet/Cabinet Deputy/Officer under delegated powers	
Decision date	Item No	Title
6 March 2018	Agenda item 5	Review of taxi and private hire licensing policy

What is the reason for calling-in this item?

Call-in can only be requested where members have evidence which suggests that the decision maker did not take the decision in accordance with the principles set out in article 13 (decision making) of the Constitution.

Please give as much detail as possible - continue on a separate sheet if necessary.

<p>The grounds for call in are based on the requirements set out in Article 13 of the Constitution and deficiencies in the</p> <p>c) consultation (f) clarity of aims and desires, (g) due consideration of all objections and (h) explaining and giving reasons for the decision.</p> <p>I consider these are all relevant based on the representations received.</p>
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Date/Time submitted: 15 March 2018

Please deliver/email the completed form to democratic.Services@cheltenham.gov.uk and mark for the attention of the Proper Officer.

The form must be received by 4.30 pm on the 5th working day after the publication of the decision

All Councillors named on this form will receive written notification of the date and time of the Calling-In Committee meeting to consider this issue and you will be able to set out your concerns in more detail for the Committee's consideration.

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The National Private Hire and Taxi Association

Pat Pratley, Chief Executive
Cllr Tim Harman, Chair, Overview and Scrutiny Committee
Cheltenham Borough Council
By email: pat.pratley@cheltenham.gov.uk
cldr.tim.harman@cheltenham.gov.uk

14 March 2018

Dear Madam and Sir:

We write on behalf of members of the Cheltenham Hackney Carriage Association, who are affiliated to the National Private Hire and Taxi Association. Our members have requested that we submit an urgent appeal for the call-in by the council's Overview and Scrutiny Committee of the Cheltenham Borough Council Cabinet decision of Tuesday 6 March in respect of its Review of Taxi and Private Hire Licensing Policy. Specifically our members wish to call in, and ask to have revisited, the proposal that all licensed hackney carriages in Cheltenham must be wheelchair accessible by 2021.

With respect to all parties involved, we do this on the basis of Article 13 in the Cheltenham Council constitution, "Decision Making". Under point 13.2 "Principles of Decision Making" it is stated clearly that all decisions of the council (including those of Cabinet) will be made in accordance with the following principles:

- (a) The action must be lawful and in accordance with all appropriate statutory and regulatory requirements and this Constitution...;
- (b) the action must be proportionate to the desired outcome;
- (c) decisions should be taken following due consultation and on the taking of professional advice from Officers;
- (d) respect for human rights;
- (e) a presumption in favour of openness;
- (f) clarity of aims and desired outcomes;
- (g) due consideration of all objections; and
- (h) explaining what options were considered and giving the reasons for the decision.

It is submitted by our members that the arrival of the decision to compel all Cheltenham taxis to be wheelchair accessible falls outside most of these parameters. The most glaring anomalies surrounding the decision to go all-WAV are: (1) the format of the actual decision; (2) the consultation process, and (3) lack of evidence.

When the decision was made for recommendation by Cabinet on 6 March, the actual wheelchair accessible requirement bore no resemblance to the three options that were put forward in previous documents – either those options that the Licensing Sub-Committee had to vote on, or the same options as set out in the council's consultation questionnaire. Those options clearly stated:

- (a) Amend the grandfather rights so that these only apply to the current licensed vehicle and when the proprietor comes to replace that vehicle they are obligated to purchase a wheelchair accessible vehicle and/or purpose built taxi;
- (b) Make no changes to the current system;

- (c) Amend the grandfather rights rules so that those who retain [them] can interchange between saloon cars and wheelchair accessible vehicles without those rights being affected.

When the decision was set out and subsequently recommended by Cabinet, for the first time across all sections of this document pertaining to licensing of hackney carriages appeared the words: “**From 2021 all licensed hackney carriage vehicles will be wheelchair accessible.**” It is strongly contended that this exact edict was not amongst the options either the Licensing Sub-Committee, or the consultees who responded to the questionnaire, had chosen. Therefore we would question whether the proposal was put through lawfully.

The council has already been made aware of the potential logistical and financial consequences to the taxi trade of this proposal; what we must try to do here is to put forward the legal background behind whether the all-WAV proposal in its current form would be able to resist and withstand legal challenge.

Current Government position

The announcement on the council’s website following the Cabinet meeting states at point (7): “The ending of “Grandfather Rights” to allow all taxis to be wheelchair accessible by 2021, to comply with the Equalities (sic) Act 2010, and tackle disability discrimination.” The Equality Act of 2010 repealed and superseded the Disability Discrimination Act 1995; neither of these Acts has ever brought in a national policy for all hackney carriages to be wheelchair accessible.

The 1995 DDA was aiming for this outcome, but the government had to undertake a cost compliance exercise in order to justify that outcome – which results proved its financial instability. Philip Oxley of Cranfield University conducted such cost compliance exercise, which was published in 1999 (the document having been hidden for four years) – this study proved that the hackney carriage trade could neither afford, nor sustain, an all-wheelchair accessible taxi fleet. Thus the proposal was never executed. We can produce a copy of this cost compliance study if you wish to see it.

Despite that which your Councillors may have been advised to the contrary, the same applies to sections 160 to 164 of the Equality Act 2010: those are the subsections which would enforce wheelchair accessibility on (now) both taxis and private hire vehicles nationwide. Please find attached a copy of the list of Statutory Instruments that have been enacted in relation to the Equality Act to date. You will find that – with the exception of part of section 161 dealing with numbers of WAVs by way of percentages of the licensed taxi fleet in any one district (which percentages still have not been established by the Department for Transport) – these sections have not been enacted or brought into force.

Therefore, in addition to the lack of national government authority to bring in such a proposal in Cheltenham, we would ask if the relevant Councillor or Committee has undertaken a similar cost compliance exercise to ascertain whether the hackney carriage trade in your district could afford/sustain such an undertaking. We think not. The reason we say this is that in the Review documentation on the council’s website, under the usual heading “Financial Implications” it states: **None**. This could hardly be further from the truth. There may not be financial implications to the council’s budget, but there certainly would be enormous financial burdens imposed on the individual businesses that make up your taxi fleet. These will be elaborated upon later in this document.

Getting back to the position of national government, we attach two other documents: a letter from February 2008 from Nigel Dotchin of the Department for Transport, addressed to all licensing authorities in the UK at that time, which acknowledged for the first time since the issuance of the 1995 Act that a mixed fleet of saloons and WAVs should be a serious consideration. Incidentally, we clarified the position at the time: when the DfT referred to a “mixed fleet of accessible taxis”, they meant a supply of both saloons and WAVs – NOT merely side- or rear-loading WAV hackneys.

The other document is an excerpt from a booklet published by the European Conference of Ministers of Transport in March of 2007 entitled "Improving Access to Taxis". Your council's documentation actually acknowledges the existence of this document. We'll not inflict the entire document here; the attached excerpt summarises the EU Ministers' position at the time – which has not changed – that they are in favour of a mix of saloons and WAVs on the taxi fleet.

The message is the same from all these sources: the safety and comfort of the travelling public, both able bodied and disabled, depends heavily on customer choice. This sentiment was echoed in the majority of the comments submitted in your council's consultation exercise; more on that below.

You will no doubt be aware that the (then) Minister for Transport, John Hayes MP, last July announced in Parliament that he was setting up a Task and Finish Group to review the current status of taxi and private hire licensing in England. The group has been meeting on a fortnightly basis at the Department for Transport to do just that; it is examining all aspects of the industry, and ways in which national standards might be brought in across the country to right some of the wrongs that currently exist.

I am a member of that group, and I can assure readers of this document that there is **no national requirement** for an all-wheelchair accessible taxi fleet. They are even struggling to accommodate the strong desire to instigate a programme of disability awareness training for drivers, and have acquiesced to the fact that it is down to individual licensing authorities both to accommodate wheelchair passengers with a mix of suitable vehicles, and to look seriously at disability training on a local level.

The next document attached to this one is the brief judgement from a Magistrates' Court hearing in July 2007 in Milton Keynes, which was an appeal by 78 hackney carriage licence holders who successfully defended their grandfather rights to retain their saloon taxis against the imposition of an all-wheelchair accessible condition on a set date. We fully appreciate that a Magistrates' Court judgement, even one delivered by a District Judge, is not binding on any higher court. However, we believe there are many parallels in the two scenarios between the Milton Keynes case and the Cheltenham proposals; this is why we have included it in our appeal/application for the call-in.

The case for consultation

It has been claimed on both the council's website and in the media that Cheltenham Council consulted widely on the new Review of Taxi and Private Hire Licensing Policy, amongst "many stakeholders". We have seen the consultation document that was posted on the council website, and it returned responses from (reportedly) 39 respondents.

We have analysed the makeup of the actual people who responded to this questionnaire: of the 39, there were 27 hackney carriage drivers; three members of the private hire trade (one operator, two drivers); two local residents, an officer from Environmental Health, a response from GCHQ, a response from Guide Dogs, a community fundraiser, a ward Councillor, and a Gloucestershire County Council procurer of taxi services and wheelchair specialist. With the greatest of respect to all those who bothered to send in a response, this is hardly a "wide consultation amongst stakeholders", or even members of the public (two, out of a population of 118,000+), on which to base a proposal with such wide-reaching financial and comfort implications to local transport providers and their passengers.

We must advise you also that the first of the hackney carriage licence holders' responses to the questionnaire was actually a group response from our affiliated members, the Hackney Carriage Association, which at that time represented 147 of the 187 saloon licence holders in the district. So in reality the council received far more than just 39 responses; you got 185 replies back from hackney licence holders, 146 of which were neither accounted for or acknowledged. But the total of these replies was overwhelmingly comprised of members of the trade; your questionnaire only gained a handful of replies from members of the public or council officers.

This raises the further question as to how many local disabled and/or elderly support groups had been consulted during this exercise. A cursory investigation revealed the following list, of which only Guide Dogs was represented in the responses. Guide Dogs representatives were understandably only interested in access refusals due to the presence of assistance dogs with the passenger; they proffered no opinion on wheelchair access. Other local support groups whose members may or may not wish to travel in wheelchair accessible vehicles include:-

- CBH Oasis Ability Hub
- Gloucestershire Lifestyles
- Healthwatch Gloucestershire
- Shopmobility (users of mobility scooters sometimes travel in their scooter, especially if large)
- Insight Gloucestershire (blind/partially sighted passengers do not like travelling in WAVs)
- Age UK Gloucestershire: there are two branches in Cheltenham
- You're Welcome
- GOPA (Gloucestershire Older Persons' Association)
- Cheltenham Arthritis Support Group (arthritis very often cannot get in/out of WAVs)
- Cheltenham Stroke Support Group: CBH (stroke victims often cannot use WAVs)

Apart from mention of a Leonard Cheshire home, we saw no other acknowledgment in the report to Cabinet of any such support groups having been contacted during the consultation.

Further on the subject of consultation, we have been advised that, whilst the four 'formal' industry/council meetings were minuted and submitted for consideration in the report to Cabinet, there were at least four other bi-monthly meetings held between the trade and council officers at which the entire range of issues – including the all-WAV policy and grandfather rights – had been discussed but not minuted or made available to either Committee or Cabinet. Our members maintain that this is hardly "a presumption in favour of openness", under point (e) in the Principles of Decision Making.

Incidentally, upon looking up and printing off the minutes of all four of the formal industry/council meetings held during March and April 2017, a search for the term "grandfather rights" turned up no results. This indicates to us that the implications of a mandatory across-the-board WAV requirement for all taxis on a specific date were never looked into in any depth.

This leads us to the next facet of consultation: whether it has accomplished what it should have done. No doubt you are aware that the case transcript from the Judicial Review of **Sardar v Watford Borough Council** examines the principle of consultation in detail; we attach the transcript for your information. Again, it strikes us that there is a distinct parallel between the Sardar/Watford JR and the current proposals from your council, on the basis that the Councillors in the Sardar case decided they would go out to consultation on the matter of deregulation of taxi numbers. However, the way in which this consultation was conducted meant that the outcome was a foregone conclusion: the Committee decided (off the record at the time) that they were going to deregulate, but the amendment to the proposals invited other Committee members to consider not whether or not to delimit taxi numbers, but **the way in which** this deregulation was to take place.

Sure, there was plenty of publicity surrounding this decision: they issued a consultation questionnaire, they advertised in the press, they consulted all over the place. But the issue had already been decided: deregulation would take place, it was merely a case of logistics as to how and when.

We would respectfully ask: Is this not similar to the situation in Cheltenham? Your questionnaires were available to "stakeholders" and also the general public, from whom you received exactly two responses. But more significantly, none of the three options that were set out **was that which was voted in**. Does your council not face the risk of a Judicial Review of your decision in a similar way?

We can but quote the seminal paragraph from the Sardar/Watford case – which actually comes from an earlier case – **R v Brent London Borough Council ex parte Gunning 1985 84 LGR 168**: *“It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and intelligent response; adequate time must be given for this purpose, and the product of consultation must be taken into account when the ultimate decision is taken.”*

The latter point raises another issue here: it is submitted that from the responses your council did receive on the review of policy, no notice was taken whatsoever of the views within those responses. Your Licensing Sub-Committee voted in favour of option (c), as did quite a few of the trade respondents. Most of the hackney carriage drivers voted in favour of option (b): to leave things as they are. And yet the ultimate result is for an all-WAV hackney fleet by 2021. This is hardly taking into account “the product of consultation... when the ultimate decision is taken.”

Further, we believe that the council’s treatment of the consultation responses fails to live up to point (g) in the Principles of Decision Making: that of due consideration of all objections. Our members maintain that no notice was taken of any of the consultation responses.

Practical considerations

One of the first things we asked of our members was to supply us with the number and location of the current taxi rank spaces in Cheltenham, bearing in mind the numbers of taxis that can rank on each locality, which side of the road the rank is on, and most importantly whether a wheelchair passenger would be able to access/egress a wheelchair accessible taxi on those ranks. This set of considerations is so often forgotten in many licensing authorities when wheelchair accessible taxi policies are being formulated.

In reading through the consultation responses, we noted that the practical difficulties of loading and unloading wheelchair bound passengers came up on numerous occasions, both in respect of side-loading and rear-loading WAVs. Of course part of the policy review is considering the removal of rear-loading WAVs on the hackney fleet, but there are mixed opinions on this issue depending upon the type of business the respondent runs, and whether their vehicles would be disadvantaged by the exclusion of rear-loading WAVs. This is another aspect of disabled passenger transport which will have to be given serious consideration.

The main issue when looking at Cheltenham’s limited rank spaces in the town centre is quite simply (a) whether they will be able to accommodate anywhere near the same number of rank taxis when they are all the larger wheelchair accessible vehicles; and (b) whether the drivers in all these taxis in a ranking position will be able to safely assist a wheelchair bound passenger into his/her taxi.

Was a site visit ever conducted by any Councillors, either on the Licensing Committee or Cabinet, to view the position and number of rank spaces in Cheltenham? This is the current breakdown of ranks, along with their position on the road – the significance of which becomes obvious when one views the rank and tries to understand how dangerous it is/would be to load a wheelchair bound passenger on the offside of the vehicle.

There are seven taxi ranks:-

1. **Promenade**: This is on the offside of the road (right) and has a stand for six taxis. This rank is extended after 6pm to incorporate an additional 11 spaces.
2. **Royal Well**: This rank only has two official stands but the plate only states “stand for taxis” - access to the taxis can be made from either side. This is a 24-hour rank; this particular rank is situated by the

coach station and has a taxi company and a National Express booking office working from it. The extra space on this piece of land is used by taxis and private vehicles as a short term car park.

3. **Pitville Street:** This 24-hour rank has a stand for five taxis and the access is on the offside.

4. **Bath Road:** This is only a rank between 10pm and 4am and has a stand for six taxis; the rank is on the near side. Also this rank is situated directly outside a Weatherspoons and a night club and is very often inaccessible to taxis because of private hire and private cars parking on the rank.

5. **Montpelier:** This rank has a stand for three taxis; it is on the nearside and is 24-hour. I was shown a photograph of this rank – it is not marked out on the pavement; on the contrary it has double yellow lines down the entire length. Further, immediately on the nearside is a series of large pillars of a building; these would make wheelchair access and loading very difficult for both driver and passenger.

6. **Queens Hotel:** This rank has a stand for three taxis and is on the nearside and is 24-hour. This rank is however never practical to work from because of its position in the town. The only real time this is used is during race week.

7. **Queens Road:** This rank has two spaces and the Taxi markings are on the road but there is no supporting plate, only a sign that says “no waiting on taxi rank“. This is 24-hour and is situated directly outside the railway station. There are no official rank spaces within the train station as this is deemed private property and a permit costing over £700 a year is required to be able to work there.

There is a taxi waiting or feeder rank for the Montpelier rank which could hold approximately 12 cars (if private cars didn't park on it). It is also on the opposite side of the road so when a space becomes available on the actual rank the taxis in the “waiting area“ have to drive up the road, around a roundabout then onto the rank. This can be very difficult during busy times.

There is also a taxi waiting area not far from the Queens Hotel rank - this is from 8pm only and can hold eight cars but this is actually pointless as there is no workable rank within the vicinity.

So the current situation is that there are exactly 21 day stands and 23 night-only stands for over 200 Cheltenham licensed taxis. This raises the very serious question of where 200 wheelchair accessible taxis will be able to rank up, deal with/accommodate wheelchair bound passengers safely, park and wait until passengers approach them for a journey. It is submitted that these factors were not considered when the all-wheelchair accessible taxi decision was taken.

Actually it was raised several times amongst the consultation responses that more emphasis should be placed on the availability of wheelchair accessible vehicles amongst the private hire trade in Cheltenham, on the basis that the majority of wheelchair passengers book their journeys in advance. As our members point out, Cheltenham is not a large city; it is a town, whose transport infrastructure cannot support the presence of over 200 wheelchair accessible taxis.

Financial considerations

As the council is well aware, the issue of an all-WAV taxi fleet in Cheltenham is a very emotive subject at the present time. We are trying here to illustrate exactly why this is the case, and of course top of the list is the financial status of the taxi trade. We have already seen a total dismissal of the matter of “plate values” by Councillors and officers alike, as if this is a reason to dismiss grandfather rights as a matter of course. One could surmise that this attitude is a violation of point (d) in the Principles of Decision Making: respect for human rights. Why cannot the 187 saloon plate holders wish for a legitimate expectation that they may be able to continue working in their business with the “tool of the trade” of their choice – and that of most of their passengers?

Another serious financial consideration of course brings in the other requirements placed on Cheltenham taxis: they must all be silver in colour, they must be below a certain age (which, granted, will change by 2021), and in addition they must adhere to air quality restrictions: diesel taxis must be Euro 6 by 2021, if diesel vehicles are even allowed to be sold by then.

Was any evidence gathered as to the feasibility of 200 Cheltenham taxi proprietors being able to find vehicles that would fulfil all these criteria? It is notoriously difficult to find decent second hand purpose built taxis under five years old, especially silver taxis.

With respect, the current price of a wheelchair taxi was guess-timated totally incorrectly by the council: a new purpose built diesel "London black cab" costs in excess of £36,000. And if the requirement for ultra-low emission vehicles is enforced in Cheltenham by 2021, this would entail the trade having to buy the new Geely electric taxi, which (whilst not readily available at present due to production faults) in 2018 will cost some £55,600 including the battery. This is beyond the range of reality, in anybody's reckoning; to inflict this sort of expenditure on an entire trade would be indefensible.

Another part of the financial equation must be considered: In order for the hackney trade to be able to afford such futuristic plans, will they be granted a fare increase commensurate to the requirement? When was the last time the taxi trade had a fare increase? When was the last time the licensing fees were increased? Does this occur every year? Again, it is strongly submitted that in setting out this grand plan of all-wheelchair accessible taxis, no consideration was given and no evidence was gathered to substantiate the affordability of such a proposal.

On a final note, we would refer readers of this document back to the Milton Keynes transcript and raise the same point that was highlighted by the District Judge in that case: Has Cheltenham Borough Council been able to offer any evidence as to the necessity for mandating a 100 per cent wheelchair accessible taxi service in this community? Above all, this was the grounds by which the District Judge came down against the council in her judgement: Milton Keynes Council could provide no such evidence.

As we believe no such evidence was produced either by the Licensing Committee or by Cabinet at Cheltenham Borough Council, we believe this is a major legal factor which gives strength to the request for the call-in of the policy, on the basis of point (b) in the Principles of Decision Making: the action must be proportionate to the desired outcome. Our members believe it was not.

We have seen evidence from many of the Cheltenham hackney drivers who responded to the consultation survey, who have claimed that they have never been asked to carry wheelchair-bound passengers; that most of their disabled passengers prefer to sit next to them in their saloon taxi as it makes them feel more "normal"; and that a large number of applicants who were successful in gaining a "free" WAV licence in Cheltenham have never used their vehicle for wheelchair work. It is submitted that these factors must be considered in the overall setting of an accessible policy for **all** disabled passengers in Cheltenham.

Conclusion

Within the Reports Pack to Cabinet for the 6 March meeting are several excerpts from the Department for Transport Best Practice guidance. The most recent of these documents was issued in 2010; we are currently awaiting an update, to include statutory guidance on safeguarding issues and other current concerns.

However, there is one section from the existing Best Practice guidance which we believe is particularly relevant to this situation: that of proportionality (as listed under paragraph 8 in "The role of licensing: Policy justification"). *"The aim of local authority licensing of the taxi and PHV trades is to protect the public. [They] will also be aware that the public should have reasonable access to taxi and PHV services, because of the part they play in local transport provision. Licensing requirements which are unduly stringent will tend unreasonably to restrict the supply of taxi and PHV services, by putting up the cost of*

operation or otherwise restricting entry to the trade. Local licensing authorities should recognise that too restrictive an approach can work against the public interest – and can, indeed, have safety implications.

(and from paragraph 10) "... Local licensing authorities will, therefore, want to be sure that each of their various licensing requirements is in proportion to the risk it aims to address; or, to put it another way, whether the cost of a requirement in terms of its effect on the availability of transport to the public is at least matched by the benefit to the public... it is to urge local licensing authorities to look carefully at the costs – financial or otherwise – imposed by each of their licensing policies. It is suggested they should ask themselves whether those costs are really commensurate with the benefits a policy is meant to achieve."

I apologise for the length of this document and its enclosures. However, our members believe that the contents of this document represent everything that was not present, considered or submitted to either the Licensing Committee or, particularly, to Cabinet before they took the decision to mandate an all-wheelchair accessible taxi fleet in Cheltenham. We have always maintained that any group of Councillors cannot and should not be expected to take decisions that so severely impinge on the livelihoods of rate payers in the district, without having to hand all the relevant information to make an informed decision.

We would ask that you give serious consideration to this document, and that the request from our members for a call-in of the policy is equally serious, and will be acted upon straight away. Thank you.

Yours faithfully

For **THE NATIONAL PRIVATE HIRE AND TAXI ASSOCIATION**

(Mrs) DONNA D SHORT

Director

2017 No. 107 (C. 10)

EQUALITY

The Equality Act 2010 (Commencement No. 12) Order 2017

Made - - - -

7th February 2017

The Secretary of State for Transport makes the following Order in exercise of the power conferred by section 216(3) of the Equality Act 2010(a):

Citation

1. This Order may be cited as the Equality Act 2010 (Commencement No. 12) Order 2017.

Provisions coming into force

2. The following provisions of the Equality Act 2010 come into force on 6th April 2017 —
 - (a) section 165 (passengers in wheelchairs) in so far as it is not already in force; and
 - (b) section 167 (lists of wheelchair-accessible vehicles) in so far as it is not already in force.

Signed by authority of the Secretary of State

7th February 2017

Andrew Jones
Parliamentary Under Secretary of State
Department for Transport

(a) 2010 c. 15.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force sections 165 and 167 (in so far as they are not already in force) of the Equality Act 2010 (c.15). Section 165 imposes duties on the driver of a designated taxi and the driver of a designated private hire vehicle (“a designated vehicle”), to carry passengers who are either wheelchair users or wheelchair users accompanying passengers, so as to enable wheelchair users to access and exit designated vehicles. Section 165 also creates a new criminal offence if the driver of a designated vehicle fails to comply with the duties specified in section 165. Section 166 provides that the driver of a designated vehicle is exempted from the duties imposed by section 165 if a licensing authority issues the driver with an exemption certificate which is in force and the prescribed notice of the exemption is exhibited in the designated vehicle in the prescribed manner. Section 166 also provides that a taxi or private hire vehicle is “designated” if it appears on a list maintained under section 167. Section 167 provides that for the purposes of section 165, a licensing authority may maintain a list of vehicles which are either taxis or private hire vehicles and conform to such accessibility requirements as the licensing authority thinks fit.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Sections 4 and 5	1 st October 2010	2010/2317
Section 6(5) (partially)	6 th July 2010	2010/1736
Section 6(6) (partially)	4 th August 2010	2010/1966
Section 6 (in so far as not already in force)	1 st October 2010	2010/2317
Sections 7 to 13	1 st October 2010	2010/2317
Sections 15 to 21	1 st October 2010	2010/2317
Section 22 (partially)	6 th July 2010	2010/1736
Section 22 (in so far as not already in force)	1 st October 2010	2010/2317
Sections 23 to 27	1 st October 2010	2010/2317
Sections 28 to 31 (partially)	1 st October 2010	2010/2317
Sections 28 to 31 (in so far as not already in force)	1 st October 2012	2012/1569
Section 31(9) (in so far as not already in force)	1 st September 2012	2012/2184
Sections 32 to 35	1 st October 2010	2010/2317
Section 36(1)(a) to (c), (2) to (4), (7) and (8)	1 st October 2010	2010/2317
Section 37	11 th July 2011	2011/1636
Section 38(1) to (7) and (9)	1 st October 2010	2010/2317
Section 38(8) (partially)	4 th August 2010	2010/1966
Section 38(8) (partially)	1 st October 2010	2010/2317
Sections 39 to 60	1 st October 2010	2010/2317
Section 61(8) and (9) (partially)	6 th July 2010	2010/1736
Section 61 (in so far as not already in force)	1 st October 2010	2010/2317
Sections 62 to 77	1 st October 2010	2010/2317
Section 78	22 nd August 2016	2016/839
Section 79	1 st October 2010	2010/2317
Section 80(8) (partially)	4 th August 2010	2010/1966
Section 80 (in so far as not already in force)	1 st October 2010	2010/2317
Section 81(partially)	6 th July 2010	2010/1736
Section 81 (in so far as not already in force)	1 st October 2010	2010/2317
Section 82 (partially)	6 th July 2010	2010/1736

Section 82 (in so far as not already in force)	1 st October 2010	2010/2317
Section 83(11) (partially)	4 th August 2010	2010/1966
Section 83 (in so far as not already in force)	1 st October 2010	2010/2317
Sections 84 to 93	1 st October 2010	2010/2317
Section 94(12) (partially)	4 th August 2010	2010/1966
Section 94 (in so far as not already in force)	1 st October 2010	2010/2317
Section 95	1 st October 2010	2010/2317
Section 96(9)(b) (partially)	3 rd September 2010	2010/2191
Section 96(10) and (11) (partially)	6 th July 2010	2010/1736
Section 96 (in so far as not already in force)	1 st October 2010	2010/2317
Section 97 (partially)	6 th July 2010	2010/1736
Section 97 (in so far as not already in force)	1 st October 2010	2010/2317
Section 98 (partially)	1 st October 2010	2010/2317
Section 98 (in so far as not already in force)	1 st September 2012	2012/2184
Section 99	1 st October 2010	2010/2317
Sections 100 to 105 (partially)	1 st October 2010	2010/2317
Sections 100 to 105 (in so far as not already in force)	1 st October 2012	2012/1569
Section 107 (partially)	1 st October 2010	2010/2317
Section 107 (in so far as not already in force)	1 st October 2012	2012/1569
Sections 108 to 115	1 st October 2010	2010/2317
Section 116(1)(a) and (b) and (2)	1 st October 2010	2010/2317
Section 116 (1)(c) (partially)	1 st October 2010	2010/2317
Section 116(1)(c) (in so far as not already in force)	18 th March 2011	2010/2317
Section 116(3) (partially)	4 th August 2010	2010/1966
Section 116(3) (partially)	1 st October 2010	2010/2317
Section 116(3) (in so far as not already in force)	18 th March 2011	2010/2317
Section 117(1) to (4) (partially)	6 th July 2010	2010/1736
Section 117 (in so far as not already in force)	1 st October 2010	2010/2317
Sections 118 to 135	1 st October 2010	2010/2317
Section 136(1) to (6)(a) to (e)	1 st October 2010	2010/2317
Section 136 (6)(f)	18 th March 2011	2010/2317
Section 137	1 st October 2010	2010/2317
Section 138(1) and (2) and (5) to (7) (partially)	6 th July 2010	2010/1736
Section 138 (in so far as not already in force)	1 st October 2010	2010/2317
Sections 139 to 146	1 st October 2010	2010/2317
Section 147(4) (partially)	6 th July 2010	2010/1736
Section 147 (in so far as not already in force)	1 st October 2010	2010/2317
Section 148	1 st October 2010	2010/2317
Section 149	5 th April 2011	2011/1066
Section 150 (partially)	18 th January 2011	2011/96
Section 150 (in so far as not already in force)	5 th April 2011	2011/1066
Section 151 to 155	18 th January 2011	2011/96
Section 156	5 th April 2011	2011/1066
Section 157	18 January 2011	2011/96
Section 158	1 st October 2010	2010/2317
Section 159 (partially)	1 st October 2010	2010/2317
Section 159 (in so far as not already in force)	6 th April 2011	2011/96
Section 161 (partially)	1 st October 2010	2010/2317
Section 165 (partially)	1 st October 2010	2010/2317
Section 166	1 st October 2010	2010/2317
Section 167(1) to (5) and (7) (partially)	1 st October 2010	2010/2317
Section 167(6)	1 st October 2010	2010/2317

Sections 168 to 185	1 st October 2010	2010/2317
Sections 187 and 188	1 st October 2010	2010/2317
Section 189 (partially)	4 th August 2010	2010/1966
Section 189 (in so far as not already in force)	1 st October 2010	2010/2317
Section 190	1 st October 2010	2010/2317
Section 191 (partially)	1 st October 2010	2010/2317
Sections 192 to 195	1 st October 2010	2010/2317
Sections 196 (partially)	1 st October 2010	2010/2317
Section 197	19 th June 2012	2012/1569
Section 202(1) (partially)	11 th July 2011	2011/1636
Section 202(3)	11 th July 2011	2011/1636
Section 202(4) (partially)	11 th July 2011	2011/1636
Section 202 (in so far as not already in force)	5 th December 2011	2011/2646
Section 206	1 st October 2010	2010/2317
Section 211(1) (partially)	6 th July 2011	2010/1736
Section 211(1) (partially)	1 st October 2010	2010/2317
Section 211(1) (partially)	5 th April 2011	2011/1066
Section 211(2) (partially)	1 st October 2010	2010/2317
Section 211(2) (partially)	5 th April 2011	2011/1066
Schedule 1, paragraphs 1, 2, 3, 4, 5, 7, 8, 10, 11, 13, 14, 15 and 16 (partially)	6 th July 2010	2010/1736
Schedule 1 (in so far as not already in force)	1 st October 2010	2010/2317
Schedules 2 and 3 (partially)	1 st October 2010	2010/2317
Schedule 2 (in so far as not already in force)	1 st September 2012	2012/2184
Schedule 3 (in so far as not already in force)	1 st October 2012	2012/1569
Schedule 4, paragraphs 1 to 4	1 st October 2010	2010/2317
Schedule 4, paragraph 8 (partially)	1 st October 2010	2010/2317
Schedule 4, paragraph 9 (partially)	6 th July 2010	2010/1736
Schedule 4, paragraph 9 (in so far as not already in force)	1 st October 2010	2010/2317
Schedules 5 and 6	1 st October 2010	2010/2317
Schedule 7, paragraphs 4, 5 and 6 (partially)	6 th July 2010	2010/1736
Schedule 7 (in so far as not already in force)	1 st October 2010	2010/2317
Schedule 8	1 st October 2010	2010/2317
Schedule 9, paragraph 16 (partially)	6 th July 2010	2010/1736
Schedule 9 (in so far as not already in force)	1 st October 2010	2010/2317
Schedules 10 and 11	1 st October 2010	2010/2317
Schedules 12, paragraph 5 (partially)	6 th July 2010	2010/1736
Schedule 12 (in so far as not already in force)	1 st October 2010	2010/2317
Schedule 13 (partially)	1 st October 2010	2010/2317
Schedule 13 (in so far as not already in force)	1 st September 2012	2012/2184
Schedules 14 and 15	1 st October 2010	2010/2317
Schedule 16 (partially)	1 st October 2010	2010/2317
Schedule 16 (in so far as not already in force)	1 st October 2012	2012/1569
Schedule 17, paragraphs 1 and 6(1) to (7) (partially)	6 th July 2010	2010/1736
Schedule 17, paragraphs 1 and 6(1) to (7) (in so far as not already in force)	1 st October 2010	2010/2317
Schedule 17, paragraphs 2 to 5	1 st October 2010	2010/2317
Schedule 17, paragraph 6(8) and (9)	1 st October 2010	2010/2317
Schedule 17, paragraphs 7 to 12 (partially)	1 st October 2010	2010/2317
Schedule 17, paragraphs 7 to 12 (in so far as not already in force)	18 th March 2011	2010/2317
Schedule 17, paragraphs 13 and 14	1 st October 2010	2010/2317

Schedule 18	5 th April 2011	2011/1066
Schedule 19	18 th January 2011	2011/96
Schedule 21, paragraph 6 (partially)	6 th July 2010	2010/1736
Schedule 21 (in so far as not already in force)	1 st October 2010	2010/2317
Schedules 22 and 23 (partially)	1 st October 2010	2010/2317
Schedules 22 and 23 (in so far as not already in force)	1 st October 2012	2012/1569
Schedule 25	1 st October 2010	2010/2317
Schedule 26, paragraph 1 to 8	1 st October 2010	2010/2317
Schedule 26, paragraphs 9 to 12	5 th April 2011	2011/1066
Schedule 26, paragraphs 13 to 60	1 st October 2010	2010/2317
Schedule 26, paragraph 61 (partially)	4 th August 2010	2010/1966
Schedule 26, paragraph 61 (in so far as not already in force)	1 st October 2010	2010/2317
Schedule 26, paragraphs 62 to 64	1 st October 2010	2010/2317
Schedule 26, paragraph 65(1) to (3) and (5)	6 th July 2010	2010/1736
Schedule 26, paragraph 65(4)	1 st October 2010	2010/2317
Schedule 26, paragraphs 65(6)	5 th April 2011	2011/1066
Schedule 26, paragraphs 66 to 72	1 st October 2010	2010/2317
Schedule 26, paragraphs 73 and 74	5 th April 2011	2011/1066
Schedule 26, paragraph 75	1 st October 2010	2010/2317
Schedule 26, paragraph 76 (partially)	1 st October 2010	2010/2317
Schedule 26, paragraph 76 (partially)	5 th April 2011	2011/1066
Schedule 26, paragraphs 77 to 81	1 st October 2010	2010/2317
Schedule 26, paragraph 82 (partially)	1 st October 2010	2010/2317
Schedule 26, paragraph 82 (in so far as not yet in force)	5 th April 2011	2011/1066
Schedule 26, paragraphs 83 to 106	1 st October 2010	2010/2317
Schedule 26, paragraph 106A(a)	5 th April 2011	2011/1066
Schedule 26, paragraph 107	1 st October 2010	2010/2317
Schedule 27 (partially)	1 st October 2010	2010/2317
Schedule 27 (partially)	5 th April 2011	2011/1066

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(a) Paragraph 106A was inserted by S.I. 2011/1060.

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Taxi Accessibility

I have received a number of enquiries about whether there is currently a Government target that all taxis in local authority areas should become wheelchair accessible over a 10 year period from 2010. This letter clarifies the position.

In 2003, the Government stated that it intended to set standards for wheelchair accessible taxis and to introduce regulations that would apply to mainly urban local authority areas (so-called 'Phase 1' authorities). As you may know, the regulation making powers relating to accessible vehicles are contained in the Disability Discrimination Act 1995 and do not apply to private hire vehicles.

Since then, however, the Department has received a number of representations making the case for a broader range of disabled people's needs to be met in any regulations, rather than restricting the requirements only to wheelchair users. We have been looking at how this could be achieved but it is a complex matter. As a result, regulations have not been made.

Ministers remain keen to make progress on taxi accessibility and therefore intend to develop a consultation package for summer 2008 to seek views on the way forward.

I hope that your authority will engage in this forthcoming consultation and I would welcome your comments at that time on the way that taxi accessibility

might best be achieved. To help us develop the consultation package, we intend to set up a small informal stakeholder group, including representatives from the Institute of Licensing and the National Association of Licensing and Enforcement Officers, as well from the taxi trade and disability groups.

I have also enclosed a copy of the report by the ECMT (European Conference of Ministers of Transport) Taxi Group, which contains information that you may find of interest. You will note that it advocates a mixed fleet of accessible taxis. This will certainly be one of the options on which we will be seeking your views during the consultation process.

In the meantime, accessible taxi policies remain a matter for individual local licensing authorities in line with previous guidance that has been issued by the Department.

I should be grateful if you would pass the second copy of this letter to the Council's Taxi Licensing Officer.

NIGEL DOTCHIN

2. The ECMT-IRU Taxi Vehicle Design Recommendations

When considering the design recommendations made in this paper, it should be borne in mind that these represent a template for the future. It is not intended – nor indeed would it be realistic – to expect the design changes to be made immediately or in the near future. Rather they should be regarded as a guide for the medium- and longer-term development of taxis that can be safely and comfortably used by the majority of disabled people. It is recognized that it is impossible to provide for 100% of wheelchair users without reducing the operational viability of the vehicle for the operator and other passengers. There will be a small proportion of people who, because of the size of their wheelchair or the nature of their disability are unable to access taxis or indeed other forms of mainstream public transport. They will continue to need specialist door- to-door services.

The ECMT-IRU recommendations for taxi vehicle accessibility are based on two design levels:

Type One: Wheelchair Accessible Taxis: accessible vehicles capable of carrying the majority, but not all, passengers who travel in their wheelchair as well as people with other disabilities.

Type Two: Standard Accessible Taxis: vehicles with features designed to make use by disabled people easier, but which would only be able to carry a wheelchair user who can transfer to a taxi seat.

It is recommended that fleets of taxis used for regular services should be composed of a combination of these two types of vehicle. The proportion of each type within the taxi park is likely to vary from place to place, both within and between countries. This is a matter for decision by national and local governments. The recommendations include specific design guidance for the key features of these taxis. For the wheelchair accessible vehicles these include the height and width of passenger doors, headroom inside the taxi, the space allocated for the wheelchair user and the acceptable ramp gradients for wheelchair access.

The guidance is expressed as a recommended dimension and a minimum acceptable measurement, thus providing a range rather than a single figure. In addition, performance criteria, which describe how each feature should work in practice, have been included in the recommendations. This has been done to ensure that current manufacturers of accessible taxis would not be excluded from the taxi market. However, it is hoped (and expected) that over time, the design of vehicles will move towards achieving the recommended standards.

The recommendations also include guidance on other features that can help to make the use of taxis easier for disabled people. These include seat design, provision of grab handles, colour contrast, interior lighting, induction loops and taxi meters that are clearly visible and which give the fare audibly. These recommendations apply to both Type One and Type Two taxis.

If the two design levels are applied progressively to mainstream taxi fleets the travel opportunities for disabled people will be greatly improved. They will also make the use of taxis easier for many other people.

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Milton Keynes Magistrates Court

PETER KIRKHAM and Others

Appellants

-v-

MILTON KEYNES COUNCIL

Respondents

JUDGEMENT

This appeal is brought by Mr Kirkham and a number of others by way of complaint. The complaint in essence is that Milton Keynes District Council (MKDC) have amended its conditions in relation to hackney carriage vehicles licences. In that licences would not be renewed from 1st April 2007 in respect of vehicles that did not have a specific purpose built hackney capable of carrying passengers in wheelchairs and - were rear loading, which were excluded on the grounds of safety

MKDC are entitled by the power that is vested in them as a public body to amend the conditions BUT those conditions have to be justified as being "reasonably necessary".

That is the what I have to consider today, in other words, as the respondent has put it -

"Am I satisfied that the decision reached by the Council was reasonable, having regard to the competence of the authority making the decision, taking into account all the relevant factors"

In order to assess this, I have heard from a number of witnesses, read a number of statements and read a number of guidance's produced by various bodies.

In determining whether the Council reached a reasonable decision, I need to be satisfied that MKDC took into account all relevant factors. I will mention a few of those many factors now:-

1. DEGREE AND NATURE OF CONSULTATION

On the evidence that I have heard, I come to the conclusion that consultation was extremely limited. This was conceded by Cllr Burke in his evidence and conceded by the respondents own expert witness. Furthermore, it is clear from the number of letters produced in the appellants bundle written by bodies that that would be "interested party's" that should have been consulted but clearly had not. Cllr Burke concedes that there was no public consultation and no appropriate consultation with those who have disabilities. I have also taken into account the "minutes" of meetings prepared in the respondents bundle and given that due consideration. Nevertheless, I find it is wholly inadequate that various members of the public only found out about meetings through chance and this consultation process was flawed

2. GUIDANCE GIVEN BY VARIOUS BODIES IN FORM OF REPORTS

A number of reports were produced by various bodies which are for guidance only and have been put before the court. However, there is no evidence put before the court that these reports were properly considered or at all. To the contrary, there was evidence that the Council were aware of the best practice guidance, set up a meeting to discuss it, but this was never discussed and did not appear in the minutes of the meeting.

Indeed in one report, the European Commission Page 44 Ministers of transport does not recommend a 100% wheelchair accessible fleet but a 2 design level. This does not appear to have even been considered.

The most significant factor is

WHETHER THERE IS A DEMONSTRABLE NEED IN MK TO HAVE 100% WHEELCHAIR ACCESSIBLE FLEET

No evidence put before this court to suggest that there is any such need in MK. It is still unclear to me at this stage the reasons behind the Council's thinking, I heard no evidence to that effect which would assist me on what basis this decision was made.

It is admirable that MK DC have attempted to implement changes to serve those who are disabled however, I cannot be satisfied on that the evidence that I have heard that the decision was reasonable, as MKDC failed to take into account significant and relevant factors, a few of those have been mentioned here.

The decision of the court therefore is that the amendments to the conditions were not reasonably necessary in light of the evidence that this court has heard, therefore the appeal by Mr Kirkham and others is, allowed.

Moving one stage further, in my view, the circumstances in which the court should intervene in the decisions made by an elected body should be few and far between, however since my conclusion is that the Council's decision was not reasonable, I follow the guidance given in Blackpool BC ex parte Red Cab Taxis and amend the conditions as follows:*

I amend the condition by deleting the implementation date of 01/04/07

And

Remove the prohibition on rear loading vehicles

The amendments are made to that effect.

COSTS

Costs will follow the event and MKDC will be ordered to pay the appellants costs in full.

Supporting Information given by the DDJ in clarification:-

- a. The deletion of conditions are only applicable to those who were originally given grandfather rights prior to delimitation and not all Hackney Carriage licensed vehicles i.e. the deletion of the conditions does not apply to the new Hackney Carriage drivers.
- b. Therefore only the original grandfather rights vehicles retain the right to keep saloon type vehicles or introduce rear loading wheelchair accessible vehicles.
- c. All new vehicles introduced since the introduction of side loading wheelchair accessible vehicles have to remain in compliance with this condition.

Neutral Citation Number: [2006] EWHC 1590 (QB)

Case No: CO/8815/2005

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/06/2006

Before :

MR JUSTICE WILKIE

Between :

SARDAR and Others	<u>Claimant</u>
- and -	
WATFORD BOROUGH COUNCIL	<u>Defendant</u>

James Dingemans QC (instructed by **Clyde and Co**) for the **Claimants**
James Findlay (instructed by **Watford Borough Council Legal Services**) for the
Defendant

Hearing dates: 23 June 2006

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MR JUSTICE WILKIE

Mr Justice Wilkie :

1. This is an application by Shujait Ahmed Sardar, on his own behalf and on behalf of the Watford Hackney Drivers Association, Tariq Aziz and Shafiq Ahmed, for judicial review of decisions taken by Watford Borough Council on 5 September and 20 October 2005 to delimit with immediate effect licences for hackney cabs in the defendant's area. The remedies sought are an order prohibiting the Council from issuing new hackney carriage licenses until the completion of full and adequate consultation and an order quashing the decisions complained of and remitting the matter to the licensing committee of the defendant for reconsideration in the light of full and adequate consultation.
2. The first applicant is a self employed hackney carriage driver. He has held a licence since 1975 and is currently chairman of the Watford Hackney Carriage Drivers Association. The second and third claimants are hackney carriage cab drivers. They obtained their licenses by purchasing the vehicle plus licence from their previous owners in 2005 respectively for a total sum of £37,000 and £34,500.
3. The issue in this case concerns the decision of the defendant no longer to limit the numbers of hackney carriage licenses to be issued and henceforth to issue licenses to all who satisfy the other requirements regardless of the number of licences in place.
4. The power to issue hackney carriage licenses is contained in two statutory provisions. Section 37 of the Town Police Clauses Act 1847 provides that, the Council, "may from time to time license to ply for hire....such number of hackney coaches or carriages of any kind or description adapted to the carriage of persons as they think fit."

Section 16 of the Transport Act 1985 provides that these provisions should have effect "as if they provided that the grant of a license 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."

5. The effect of these two statutory provisions is that the Council has power to limit by number the hackney carriage licences issued but only if it is satisfied that there is no significant demand for such services which is unmet.
6. The history of the Council's approach to its exercise of this power is conveniently summarised in the report of its officers to the licensing committee meeting on 20 October 2005. The only way in which to gauge whether or not there is an unmet demand for licenses is by way of regular independent survey. The Council last commissioned one in 2001 and was about to appoint consultants to conduct a further one within the next few months. For many years the Council had adopted a policy of restricting the number of licenses it issued. Until 1995 this stood at 61 licenses when it was increased by 2 wheelchair accessible London style vehicles. Following the unmet demand survey in 2001 a policy of managed growth was adopted on 10 March 2003 resulting in an additional 10 licenses being issued in 2003 to 2004. The policy then in place would have seen an additional 6 licences issued during 2004 – 5, the commissioning of a further survey in 2005 – 6 and, subject to the results of that

survey, a further 6 licences in 2005-6. In 2003 the question of complete delimitation had arisen but on that occasion was rejected by the Council in favour of the policy of “managed growth” already referred to. This conclusion had been reached following a full consultation. One of the parties consulted was the Police and it is recorded that the Police, on that occasion, expressed a view against complete delimitation but in favour of a policy of “managed growth,” the type of policy which the Council then decided to continue.

7. Hackney carriage and private hire vehicles were the subject of an Office of Fair Trading report in November 2003. It recommended the removal of the power of local authorities to restrict numbers of licences. The government response to this, on 18 March 2004, was that it agreed that consumers should enjoy the benefits of competition in the taxi market and considered that it was detrimental to those seeking entry to a market if it was restricted. The government, thereafter, strongly encouraged all those local authorities who still maintained quantity restrictions to remove them as soon as possible. It indicated its view that restrictions should only be retained if there were a strong justification that removal of the restrictions would lead to significant detriment as a result of local conditions. However, the government considered that, ultimately, local authorities remained best placed to determine local transport needs and should be given the opportunity to assess their own needs in the light of the OFT findings rather than the government imposing a legislative solution. On 16 June 2004 the government wrote to all local authorities operating quantity control policies. It restated the government’s action plan previously published on 31st March 2004 that quantity control should only be retained where there is a clear benefit to the consumer, that Councils should publicly justify their reasons for the retention of restrictions and on how decisions on numbers have been reached. The government’s view was that, unless a specific case could be made, it was not in the interests of consumers for hackney carriage vehicle licences to be limited in number.
8. In January 2004 Silverlink Train Services Ltd, as operators of Watford Junction train station, designated the station forecourt a “private hire waiting area” and excluded hackney carriage drivers. This changed local position resulted in the licensing committee, on 3 March 2005, adopting a recommendation that officers conduct a consultation exercise before the next meeting of the licensing committee to inform a decision whether or not to suspend the existing policy of issuing a further 6 hackney carriage vehicles in the then current financial year and to engage an appropriate consultant to conduct a survey into any significant unmet and latent demand for hackney carriage services in the borough in line with government guidance issued on 16 June 2004.
9. Following upon that decision a report was prepared for the licensing committee meeting on 5 September 2005. The recommendations of the officers to that meeting included alternative recommendations:
 - “(a). That no further hackney carriage vehicle licenses be granted pending the result of an unmet demand survey /or
 - (b) that the existing policy of “managed growth” be maintained notwithstanding the Council’s decision to undertake a survey into unmet demand.”

The report described the consultation exercise which had been conducted. It included two postal surveys. At that stage officers had advertised for a consultant to conduct an unmet demand survey by the end of the calendar year. Seven tenders were being evaluated by officers with a view to appointing one of them. The report to the committee contained the following paragraph:

“Since the last committee meeting, the Council received 56 applications for hackney carriage vehicle licenses from existing private hire vehicle drivers. Those applications were refused by officers in accordance with current policy and appeals have been lodged at St Albans Crown Court. The results of the unmet demand survey will be available to either justify subsequent policy decisions or to support the defence of those appeals ”

10. The report also stated the opinion of the monitoring officer that “before changing a policy, full and effective consultation must take place with all those likely to be affected. This would include for example existing licensees and those with a legitimate expectation of having been granted a licence.” It was reported that, in the view of the author, such consultation had taken place in respect of the recommendations being made in that report.
11. It is clear from the evidence that on Saturday the 3rd September the majority group of councillors met and had had “a robust discussion” on the existing quantity limit on the number of hackney carriage vehicle licences the Council issues. Councillor Crout, the vice chair of the licensing committee, who was to be chairing the committee on the 5th, asked Mr Gough, the head of environment health and licensing at the Council, to draw up a document entitled “amendment” to replace the existing recommendations with new recommendations. It is clear that the wording of the amendment was Mr Gough’s but that he discussed it with Mr Crout before it was circulated, apparently on the date of the meeting. The “amendment” states as follows:

“As it is the intention of the council to delimit the number of hackney carriage vehicle licences that are available, the recommendations contained in this report are to be deleted and replaced by:

Recommendation:

That officers prepare a detailed report for the meeting of this committee to agree the manner under which delimitation will take effect. This will include the provision of options for the committee to consider in relation to vehicle specifications and standards, vehicle livery, and changes to pre-licensing requirements for first time holders of Watford Borough Council driver’s licences.

That any applicants for hackney carriage vehicle licences between now and the next meeting be informed of the Council’s intentions and asked to withdraw their application.

Should they not withdraw then the Council will defer any determination until after the next meeting,

That those persons currently with appeals against the Council's refusal to grant a hackney carriage vehicle licence be informed of the Council's intentions."

12. At the meeting of 5 September the committee carried the following resolution:

"1. That officers prepare a detailed report for the next meeting of this committee to agree the manner under which delimitation will take effect. This will include the provision of options for the committee to consider in relation to vehicle specification and standards, vehicle livery and changes to pre-licensing requirements for first time holders of Watford Borough Council driver's licenses..."

13. A report was prepared for the meeting of 20 October. At its commencement the report stated, by way of summary and recommendations, the following:

"1. Under the Transport Act 1985 the Council has the power to limit the number of hackney carriage vehicle licences that it issues within the borough subject to satisfying itself that having set the limit there is no unmet demand. The Council has exercised this power to restrict the number of licences that have been issued and, save for a small increase in 1995, has adopted a policy of managed growth since March 2003. The Council now wishes to remove the limit on the number of licences it issues.

Recommendations

1. That the council no longer exercises its discretion under section 16 of the Transport Act 1985 to limit policy outlined in policy LC23 of 10 March 2003 and limits on the number of hackney carriage vehicle licences that it issues and that the current policy outlined in minute LC23 of 10 March 2003 be ended with immediate effect..."

14. The report then went on to set out the policy background, the rationale for delimitation, the attitude of central government, and a description of the consultation process which took place between the 5th September and 20th October. That consultation included: a letter to all existing hackney carriage vehicle drivers on 9th September; a press release; a public advertisement and an entry on the Council's website inviting comments from the public. It involved the retention of consultants to conduct focus group meetings, to write to around 20 other stakeholders, to conduct 400 public attitude surveys, and to conduct separate focus groups held on 27 and 28 September with representatives from 7 identified stakeholders, (invitations having been issued to 4 others who did not attend). The report went on to summarise the feedback from the focus groups and attached the consultant's detailed report together with a written representation from the Watford Private Hire Drivers Association. The

report then set out the implications of increasing the hackney carriage fleet addressing issues such as: increased congestion; lack of rank space; potential reduced custom for existing licence holders; financial impact on existing licence holders who have invested in their licence; benefits to the public of additional hackney carriages; enforcement; the experience of neighbouring authorities to be gleaned from the consultant's report; opportunities for others to become involved in trade; the costs of commissioning a survey; the costs of defending the extant appeals; the waiting list; fares; and the impact on the council licensing team. The report also sets out the implications for finance, staffing and includes sections dealing with legal issues, accommodation, equal opportunities, community safety, sustainability and risks.

15. There was an addendum to that report setting out the best professional advice of the officers in relation to the removal of the limit on a number of hackney carriage vehicle licenses. Under the heading "Background" this addendum states amongst other things as follows:

" 1.1 The council has made the statement that it intends to remove the quantity restriction on the number of hackney carriage vehicle licenses it grants. This is commonly called delimiting...

1.2 At a meeting of the licensing committee on 5 September 2005 officers advised that it would be premature to delimit immediately as had been proposed as time was needed to consider vehicle and driver matters and so it was resolved...(there then appears the resolution referred to above)"

There was then a reference to a meeting on 14 September 2005 and a statement by the Mayor in response to questions from the floor. The report then goes on:

"1.3 The above makes it clear that the licensing committee on 5 September accepted that the council was going to delimit and that it wanted on 20 October 2005 sufficient information to agree the manner under which delimitation would take effect"

The addendum then set out a series of possible decisions and outcomes with the officer's recommendations and reasons. Those possible decisions and outcomes were as follows:

"The committee can finalise its decision to delimit, to take effect next working day – this is recommended for the following reasons...

The Committee can finalise its decision to delimit to take effect at a date in the future (such as 1st February 2006) – this is not recommended for the following reasons...

The Committee can agree not to delimit or can defer the decision to delimit for several months – this is not recommended for the following reasons..."

16. At the meeting of 20 October 2005 a Mr Percival, a representative of the private hire trade, was invited to speak to the committee about the proposal as was Mr Sardar. There was then a full discussion within the committee during which a number of issues were raised which, in my judgment, addressed the principle of delimitation as well as the timing of the decision and other relevant matters. A Councillor moved an amendment to the first recommendation to postpone delimitation to 31 December 2005. That was lost. The committee then voted on the substantive motion which was carried. The resolution carried was “that the Council no longer exercises its discretion under section 16 of the Transport Act 1985 to limit policy outlined in Minute number LC23 of 10th March 2003 and limits on the number of hackney carriage vehicle licenses it issues and that the current policy outlined in Minute LC23 of 10th March 2003 be ended with immediate effect...”.
17. It is not in dispute that there could be no change of policy without consultation. Equally it is not in dispute that there was no consultation prior to 5 September 2005 on delimitation.
18. It, therefore, follows that if, and to the extent that, there was a decision on 5 September 2005 to delimit the number of hackney carriage licenses to be issued then that decision was taken unlawfully.
19. Further, it is said by the claimants that, even if the effective decision to delimit was taken on 20 October 2005, the consultation which took place between 5 September and 20 October was ineffective as it was not undertaken at a time when proposals were still at a formative stage. The policy to delimit had got beyond the formative stage having already been decided, even if only as a matter of principle, on 5 September. It is also said by them that the way in which the Council itself expressed itself after the 5 September to prospective consultees gave the impression that the question of principle on delimitation had been decided so that any consultation would not be on that aspect of the matter as the decision had already been taken. It is said that it can be inferred that this had an adverse effect on the consultation itself. In particular it is said that the Police, who had expressed a view on delimitation on a previous occasion when consultation was conducted at a stage when all options were open, did not respond on this issue on this occasion as they said it would be “inappropriate” for them to do so, though they did respond on a number of other issues upon which consultation was taking place. It is said that the inference may be drawn that the Police were unwilling, on this occasion, to express a view on an issue which had already been decided. It therefore follows, according to the claimants, that the decisions made on 20 October must be quashed as not being preceded by a genuine consultation addressing the issue of principle which, they say, had already been determined on 5 September by an unlawful decision.
20. The defendant contends that the effective decision was taken on 20 October. The meeting on that date did, they say, consider the merits of the policy of delimitation having had the benefit of a full consultation which encompassed that issue. In effect, the defendant characterises the claimant’s complaint as one that the decision taken on 20 October was “pre-determined” by the decision of 5 September and says that the Court should follow the approach identified by Mr Justice Richards, as he then was, in *Georgiou v Enfield 2004 LGR 297* at para 31:

“The Court needs to consider ...whether, from the point of view of the fair minded and informed observer, there was a real possibility that the planning committee or some of its members were biased in the sense of approaching the decision with a closed mind and without impartial consideration of all relevant (licensing) issues. That is a question to be approached with caution, since it is important not to apply the test in a way which will render local authority decision making impossible or unduly difficult.”

The defendant says that an examination of the minutes of the meeting of 20 October demonstrates that there were no closed minds but a full and proper debate on the issue without any pre-emption of the decision on delimitation.

21. There has been considerable debate in the various affidavits as to the nature of the committee’s decision on 5 September 2005. The claimants say that, in effect, the decision to delimit was taken on 5 September and only the details of the implementation and, in particular, its date, remained to be decided on 20 October. The claimants argue that the consultation exercise was, though itself genuine, somewhat of a futile exercise on the issue of delimitation as the decision had already been taken. The defendant, on the other hand, has asserted in its evidence that the committee, on 5 September, was only formulating a proposal for delimitation and that its resolution directed the officers to carry out all the necessary steps and consultations in order to enable the committee on 20 October to take a fully informed decision whether to adopt the proposal to delimit.
22. The document entitled “Amendment” is central to this debate. It is in two parts. The first part is by way of a preamble and states it to be the intention of the council to delimit. As a consequence, the recommendations contained in the existing report are to be deleted and replaced by the resolution which is set out and to which I have already referred. The second part of the “amendment” comprises the resolution actually carried by the committee. That resolution does not, in itself, constitute a decision to delimit the number of hackney licences but requires officers to prepare a detailed report on the manner in which delimitation will take effect. Thus, the defendant is correct in saying that, until 20 October, no decision was taken to delimit the number of hackney licences. The claimant argues that, whilst this may be accurate, it is clear that the decision in principle had been taken on 5 September so that the policy to delimit as a matter of principle had gone beyond the formative stage.
23. In my judgment the best evidence of the nature of the decision taken on 5 September lies in the document which was before the committee. In my judgment, on its face, the document makes it clear that the council was being asked on 5 September to make a decision in principle to delimit and to resolve to receive a report at its next meeting to deal with the manner in which delimitation would take effect.
24. The public statements made by or on behalf of the Council thereafter also constitute compelling evidence as to what the Council believed it had done on 5 September. Of particular importance is what is contained in the various documents inviting responses from the public at large and particular interest groups. The principal of these is what was placed on the Council’s website inviting the public to respond to the consultation exercise. In my judgment that document is wholly consistent with the decision of 5

September having been a decision made in principle to delimit and not with it having been a decision to consult about a proposal to delimit on the footing that no decision had yet been made. This much is also made clear by the letter written by the Mayor on 9 September to all hackney carriage drivers and vehicle owners inviting them to an informal meeting on delimitation and strongly urging them to take part in the consultation on the issue. That letter is consistent only with a decision in principle having been taken on 5 September to delimit the number of hackney carriages.

25. On the other hand, the public notice inviting response to the consultation says in terms “on 20 October 2005 Watford Borough Council will be deciding whether to remove the limit on the number of hackney carriages in the borough and would like your views”. That public notice then goes on to state that the Council is, in particular, considering seven specific matters none of which raises the issue of principle but each of which concerns matter of detail on the assumption that there is delimitation. The invitation to the public is to comment on “these and any aspect of taxi and private hire vehicle licensing”.
26. Equally important is the basis upon which the consultation exercise was conducted on behalf of the Council by Halcrow Ltd. The introduction to the Halcrow report sets out at paragraph 1.1.2 the following:

“Watford Borough Council has made a decision in principle to remove the policy of limiting the numbers of hackney carriages.”

At paragraph 1.2 under the heading “Objectives” the report says:

“The prime objective of the study is to consult with a wide range of interested parties regarding the changes in policy...”

In paragraph 1.3.3, the report sets out the immediate context as being the appeal of 56 applicants for hackney carriage licences refused by the Council to the Crown Court. The report says “Watford Borough Council made the decision to remove the numerical limit as it was unlikely to be able to defend its current policy of restriction based on the 2001 evidence”. The report proceeds in part 3 to describe the consultation. The introductory paragraph states as follows at 3.1.1:

“The consultation exercise sought to gain an understanding of the views from the trade, local stakeholders and the public regarding the removal of the numerical limit and potential changes to the Borough’s licensing policies.”

It then sets out how the consultation was structured and it includes discussion by focus groups on a number of issues, including de-restriction. The report then sets out the responses of the various focus groups and interested parties on each of the subjects consulted upon. The defendant relies upon the fact that Halcrow Ltd saw fit to seek the views of those whom it consulted on the principle of de-restriction as well as on the issues of detail which would need to be addressed in order to carry the decision into practice but that has to be viewed in the light of what the report says about the background.

27. A certain amount of the evidence and the argument focussed on a demonstration conducted by a number of hackney carriage drivers and vehicle owners on 9 September in protest as to what they saw as a decision to de-limit without adequate consultation. It appears there was a confrontation in the car park at the Council offices in the course of which the directly elected Mayor, who was not a member of the committee and within whose remit this issue did not lie, was asked to respond to the demonstrators. Some reliance is placed on the words in which she did so in which she stated her personal view that de-limitation was the correct course to follow and that the decision in principle had been taken. In my judgment this episode is of limited assistance to me in assessing what was decided on 5 September. It is clear that words spoken in an heated situation expressing a personal view and a personal response to a difficult situation are not words which should necessarily be given huge weight in deciding an issue such as this. This is to be contrasted with the greater weight to be given to her deliberate language when writing in an official capacity to the hackney carriage drivers and owners in the letter of 9 September already referred to.
28. The defendant points out that in the report of 20 October there is an appearance of ambivalence in one passage in the report to councillors. In paragraph 3.6 the following statement appears:

“At its meeting on 5 September 2005, the committee made an in principle decision to cease to exercise its power under section 16, to consult with interested parties on this proposal and it asked officers to prepare a detailed report to enable the council to consider the manner under which proposed de-limitation would take place.”

They point out that within this paragraph the writer appears to face both ways on the issue whether there has been a decision in principle or whether what was at that stage under consideration was simply a proposal. They also rely on the fact that, within the minutes of the meeting of 5 September, the committee directed officers to seek the views of various groups and that an advertisement was to be placed in the Watford Observer inviting people to give their views about de-limitation. The defendant relies upon each of these passages as indicating that the decision on 5 September was to consult upon a proposal rather than to take a decision in principle and thereafter to consult on the manner of implementation of that decision.

29. In my judgment, having had regard to the totality of the evidence, the Council on 5 September took a decision in principle to de-limit. Further, in my judgment, the policy of delimitation, by virtue of that decision, ceased to be a policy which was at the formative stage. The description “a formative stage” may be apt to describe a

number of different situations. A Council may only have reached the stage of identifying a number of options when it decides to consult. On the other hand it may have gone beyond that and have identified a preferred option upon which it may wish to consult. In other circumstances it may have formed a provisional view as to the course to be adopted or may “be minded” to take a particular course subject to the outcome of consultations. In each of these cases what the Council is doing is consulting in advance of the decision being consulted about being made. It is, no doubt, right that, if the Council has a preferred option, or has formed a provisional view, those being consulted should be informed of this so as better to focus their responses. The fact that a Council may have come to a provisional view or have a preferred option does not prevent a consultation exercise being conducted in good faith at a stage when the policy is still formative in the sense that no final decision has yet been made. In my judgment, however, it is a difference in kind for it to have made a decision in principle to adopt a policy and, thereafter, to be concerned only with the timing of its implementation and other matters of detail. Whilst a consultation on the timing and manner of implementation may be a proper one on these issues it cannot, in my judgment, be said that such a consultation, insofar as it touches upon the question of principle, is conducted at a point at which policy on that issue is at a formative stage.

30. The question arises in this case, however, what is the position where, as here, there has, after the decision in principle has been taken, been a full blown consultation in the course of which views were invited, and were expressed, on the issue of de-limitation, where the report to the committee, on 20 October, set out in full the outcome of that consultation, including the question of principle, where the report to the committee presented a series of possible decisions including deciding not to de-limit, where the report to the committee set out in full the various arguments for and against de-limitation, and where it is apparent that the debate in the committee dealt fully with the question of de-limitation and debate was not foreclosed on the footing that a decision in principle had already been taken?
31. The defendant has submitted a powerful argument that, in those circumstances, whatever may have been the muddle and deficiencies in the decision taking process on 5 September, those who were minded to express their views on the issue of principle have had the opportunity to do so and, for the most part, have taken it, the committee has confronted the issue of principle in substance with an open mind, and, accordingly, the decisions of 20 October have been taken after full and proper consultation and should be allowed to stand.
32. It is common ground that the principles applicable to consultation are set out in the decision of the Court of Appeal in *R v North and East Devon HA ex parte Coghlan* 2001 QB 213 at para 108 in the following terms:

“It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and intelligent response; adequate time must be given for this purpose; and the product of consultation must be

conscientiously taken into account when the ultimate decision is taken *R v Brent London Borough Council ex parte Gunning* 1985 84 LGR 168.”

33. In my judgment, of these four conditions, the second and third have manifestly been satisfied. I am also satisfied that the product of the consultation was conscientiously taken into account when the decision was made on the 20 October. In so deciding I bear in mind the approach to bias, in a different context, referred to by the defendant and described in the decision in *Georgiou*. The problem, however, is with satisfying the first principle and whether the conscientious consideration of the consultation was applied, in effect, to the question whether to reverse a decision which had already been made rather than taking a decision untrammelled by any prior decision. In my judgment, the requirement that the decision taking process, where consultation is required, has to be both substantively fair and have the appearance of fairness, is of such importance that, even though what was done after 5 September was done professionally and in accordance with the requisite standards, there must remain a residual feeling that the decision to delimit has not been taken in a fair way. On the crucial issue of principle the sequence has been - decision first, consultation later. It is a different matter to decide to reverse a previous decision rather than to take one in the first place and, in my judgment, the consultation exercise and its fruits went, on the issue of principle, to inform a decision of the first type rather than one of the second. Further, the claimant has identified one particular aspect of the matter which, it says, highlights this problem. That is the fact that the Police who, in 2003, did express a view on the issue of principle, on this occasion decided that it was inappropriate to do so. There are a number of possible reasons why that may have been so. The defendant suggests that it might reflect a change of personnel in the Police, or the fact that, on this occasion, by reason of the dispute at Watford Junction railway station, the matter was thought too sensitive for them to express any view. The claimant contends that it may be that the Police did not wish to express a view on a decision which had already been taken but were content to express their views, as they did, in connection with outstanding issues yet to be determined. It is a matter of speculation what the reason may be as there is no evidence from the police as to why they chose this course on this occasion. However, the fact that an important voice in the debate has deliberately chosen to remain silent on this occasion on the issue of principle whereas, on an earlier occasion, it did not does, in my judgment, underscore the risk that the unlawful mode of proceeding on 5 September to a decision in principle had the effect that, in the consultation process carried out thereafter, one of the important views for consideration was denied the Council.
34. Furthermore, in advance of 20 October the claimants' solicitors wrote a letter pursuant to the pre-action protocol pointing out that a decision in principle had been taken in advance of any consultation so as to render unlawful that which thereafter followed. Unfortunately, the contents of that letter were not made known to the committee on 20 October apparently, I have been told, because it was thought that knowledge of threatened litigation might inflame the members of the committee against the point of view of the claimants on the substance of the issue. In my judgment, that was an unfortunate course for the officers to have taken. Their reply to the claimants' solicitors on the question of consultation was, in part, based on an argument which, though strictly accurate, I have concluded was insufficient to meet the point namely that no decision to delimit was taken on the 5 September and was, in

part, based on an assertion which has now been abandoned namely that “the trade has known for some time of the Council’s ultimate intention to pursue total delimitation and consultation has taken place”.

35. With some hesitation I have come to the view that, notwithstanding all that happened between 5 September and 20 October, the failure on the part of the defendant to consult prior to taking a decision in principle on the issue of de-limitation was fatal to their ability to take, on 20 October, a decision to delimit the number of hackney carriage licences with immediate effect. Had they acknowledged what had gone wrong on the 5 September, decided to proceed on the basis that delimitation was one of the options it was considering, albeit a preferred one, and consulted on that basis, then it would have been open to them to decide to delimit. Mr Findlay has not, however, sought to persuade me that the issue is so cut and dried that a decision to delimit is the only one open to the defendant so as to make a further consultation exercise, followed by a decision taken on a proper basis, a foregone conclusion. Accordingly, in my judgment, this application for Judicial Review must succeed. I will hear the parties on the form of the remedy and on any other ancillary matters when this judgment is handed down.

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COUNCIL'S CONSTITUTION**OVERVIEW AND SCRUTINY RULES****RULE 14. CALL-IN****General Principles**

- 14.1 Call-in is the exercise of the power of O&S Committee to review a decision in respect of an executive function that has been made but not yet implemented. Once called-in, the decision cannot be implemented other than in accordance with the call-in procedures set out in this Rule 14.
- 14.2 The following types of decision can be called-in: (i) Cabinet decision; (ii) Cabinet Member decision; (iii) Officer key decision; (iv) decision made under Joint Arrangements
EXCEPT that a decision to recommend to Council cannot be called-in.
- 14.3 A decision may be called in only once.
- 14.4 A request for call-in can only be made on the basis that the decision maker did not take the decision in accordance with one or more of the Principles of Decision Making as set out in Article 13 of the Constitution.

Procedure prior to call-in

- 14.5 When any decision is made by the Cabinet or a Cabinet Member or a key decision is made by an officer, or by a joint committee or officer under joint arrangements, notice of the decision shall be published including, where possible, by electronic means, and shall be available at the Municipal Offices normally within two working days of being made. Copies of all such decisions will be sent to all members of the Council at the same time as being published.
- 14.6 The notice in Rule 14.5 will bear the date on which it is published and will specify that the decision will come into force and may then be implemented, on the expiry of five clear working days after the publication of the decision, unless the decision has been called-in.

Procedure for calling-in

- 14.7 During the five clear working day period referred to in Rule 14.6, the Proper Officer shall call-in a decision for scrutiny by O&S Committee if so requested by its Chair or any four members of the Council, provided that full written particulars of the reason(s) for the call-in has been received by the Proper Officer by 4.30 p.m. on the fifth clear working day.
- 14.8 The Proper Officer shall immediately notify the decision maker that a call-in request has been received. The Proper Officer shall call a meeting of the O&S Committee to be held on such date as he/she may determine, where possible after consultation with the O&S Chairman and, in any case, the meeting shall take place within a period of ten clear working days of the receipt by the Proper Officer of a valid call-in request or such longer period as agreed by both the decision maker and the member(s) requesting the call-in.

- 14.9 If O&S Committee does not meet in the period set out in Rule 14.8 the decision can be implemented immediately at the end of that period.
- 14.10 In the event of the member(s) submitting the request for call-in confirming to the Proper Officer in writing that the request is withdrawn, the decision can be implemented immediately.

Procedure for scrutinising the decision

- 14.11 The member(s) submitting the request for call-in will be expected to attend O&S Committee to explain their reasons for the call-in and the alternative course of action or recommendations they wish to propose regarding the decision making process.
- 14.12 The decision maker (represented by the Leader or Lead Member if it is a Cabinet decision and the committee chairman or vice-chairman if it is a joint committee decision) may be required to and shall be entitled to attend O&S Committee and respond to the request for call-in.
- 14.13 Having considered the facts of the call-in and having received any representations from the member(s) who submitted the request and the decision maker, O&S Committee may either:
- (a) Support the decision without qualification or comment, in which case the decision can be implemented immediately; or
 - (b) Make adverse comments (with reference to the Principles for Decision Making in Article 13) regarding the process for reaching the decision but take no adverse view on the decision itself, in which case the decision can be implemented immediately and the O&S Committee comments will be set out in a report to be considered by the decision maker; or
 - (c) Propose modifications to the decision or an alternative to the decision to achieve the same effect, in which case implementation of the decision shall be delayed until the decision maker has received and considered a report from O&S Committee and decided how to proceed; or
 - (d) In exceptional circumstances (to be determined by O&S Committee and recorded in the minutes) to refer the decision the decision to Council for review or scrutiny
- 14.14 O&S Committee may refer the call-in to a sub-committee or a STG for consideration prior to taking action under Rule 14.13 (b)-(d) and, if so, the following shall apply:
- (a) O&S Committee shall meet to take its final decision on the call-in under Rule 14.13 not later than 20 clear working days from the date of the O&S Committee meeting arranged by the Proper Officer under Rule 14.8
 - (b) The member(s) who submitted the call-in and the decision maker (represented by the Leader or Lead Member in respect of a Cabinet decision and the committee

chairman or vice-chairman in respect of a joint committee) may be required and shall be entitled to attend before the sub-committee or STG

- 14.15 On receiving a request from the member(s) who submitted the call-in within the 20 clear working day period set out in Rule 14.14 (a), the Proper Officer may extend that period by up to an additional 10 clear working days (potentially allowing up to 30 clear working days for O&S Committee to meet to take its final decision)
- 14.16 If O&S Committee does not meet to consider the call-in within the period set out in Rule 14.14 (a) or such extension to that period as is made by the Proper Officer under Rule 14.15, the decision can be implemented immediately at the end of that period or extended period.

Review and scrutiny by Council

- 14.17 Where O&S Committee decides to refer the call-in to Council under Rule 14.13 (d), Council must consider the matter at its next available meeting (other than an Annual or Annual and Selection Meeting) or, if the next available meeting is not due to be held within 15 clear working days of the O&S Committee meeting, at an Extraordinary Meeting to be convened by the Proper Officer within that time.
- 14.18 If Council does not meet to consider the call-in within the period set out in Rule 14.17 the decision can be implemented immediately at the end of that period.
- 14.19 If Council does meet to consider the call-in within the period set out in Rule 14.17 but defers consideration of all or part of the call-in to a future Council meeting, Council shall meet to make its final decision on the call-in within 60 clear working days of the receipt of the call-in under Rule 14.7. If Council does not meet to consider the call-in within that 60 clear working day period, the decision can be implemented immediately at the end of that period.
- 14.20 Having considered the facts of the call-in and any recommendations from O&S Committee and having received any representations from the member(s) who submitted the request and the decision maker, Council may either:
- (a) Support the decision without qualification or comment, in which case the decision can be implemented immediately; or
 - (b) Make adverse comments (with reference to the Principles for Decision Making in Article 13) regarding the process for reaching the decision but take no adverse view on the decision itself, in which case the decision can be implemented immediately and Council comments will be set out in a report to be considered by the decision maker; or
 - (c) Propose modifications to the decision or an alternative to the decision to achieve the same effect, in which case implementation of the decision shall be delayed until the decision maker has received and considered a report from Council and decided how to proceed.
- 14.21 Where the call-in relates to a failure to comply with the Budget and Policy Framework

Rules Council may, in addition to its powers under Rule 14.20:

- (a) amend the Budget or the Policy Framework to allow the decision to be implemented in compliance with the Budget and Policy Framework Rules,
- (b) authorise the decision to be implemented as a departure from the Budget or the Policy Framework.

Action by the decision maker following call-in

- 14.22 On receiving a report from O&S Committee or Council, the decision maker shall consider the report and any recommendations and report to the next available O&S Committee the outcome of that consideration.
- 14.23 Where O&S Committee or Council proposes modifications to or an alternative to the decision that was called in, the decision maker shall either:
- (a) Confirm the called-in decision without modification; or
 - (b) Confirm the called-in decision with modification; or
 - (c) Rescind the called-in decision, take the alternative decision proposed, or propose a new decision.
- 14.24 Where the decision maker is acting under delegated powers, they may refer the report or proposals from O&S Committee or Council to the delegator to take the actions under 14.9 and 14.20 instead of the decision maker.

Call-in and Urgency

- 14.25 Subject to Rule 14.26, call-in does not apply to an urgent decision as defined in Article 13.
- 14.26 In order to rely on Rule 14.25 the decision maker must:
- (a) Obtain the prior consent of the O&S Committee chairman to the decision being treated as urgent. In the absence of the chairman, prior consent may be given by, in order, the vice-chairman or the Group Leaders acting collectively; and
 - (b) Request the Proper Officer to record in the decision, and notice by which it is made public, why in the opinion of the decision maker the decision is an urgent one and not subject to call-in.

Cheltenham Borough Council
Cabinet – 6 March 2018
Review of Taxi & Private Hire Licensing Policy

Accountable member	Councillor Andrew McKinlay, Cabinet Member for Development & Safety
Accountable officer	Mike Redman, Director of Environment
Ward(s) affected	All
Key/Significant Decision	Yes
Cabinet summary	<p>The council's current licensing policy for private hire and taxis was adopted in July 2014.</p> <p>Whilst there is no statutory requirement to undertake a review of the taxi policy, there is a commitment set out in the policy to do so at least once every three years to ensure the policy remains up to date and relevant.</p> <p>A full consultation has been undertaken and this report reports back on the consultation feedback received and sets out the next steps.</p>
Recommendations	<p>Cabinet is recommended to:</p> <ol style="list-style-type: none"> 1. Note the consultation feedback received; 2. Adopt the revised policy attached at Appendix 3 of this report; and 3. Delegate authority to the Director of Environment to take the steps necessary to implement the policy changes.
Financial implications	<p>There are no major financial implications of this change in policy however we will need to monitor if there is an impact on the no. of licenses issued and renewed due to this policy. This impact is expected to be minimal but will need to be monitored.</p> <p>Contact officer: Andrew Knott, Business Partner Accountant, Andrew.knott@cheltenham.gov.uk, 01242 264121</p>
Legal implications	<p>Should parts of the industry believe the authority's Taxi and Private Hire Licensing Policy is not sound it would be open to them to undertake judicial review proceedings.</p> <p>Contact officer: vikki.fennell@tewkesbury.gov.uk, 01684 272015</p>

HR implications (including learning and organisational development)	<p>The Licensing Team Leader will need to keep under review the resource capacity required to implement the policy changes and proposals.</p> <p>Contact officer: Carmel Togher, HR Business Partner Email: carmel.togher@cheltenham.gov.uk</p> <p>Tel: 01242 775215</p>
Key risks	As outlined in Appendix 1
Corporate and community plan Implications	<p>Enhancing and protecting our environment</p> <p>Strengthening our economy</p> <p>Strengthening our communities</p>
Environmental and climate change implications	<p>None – Emissions policy already in place to comply with EU emissions.</p>
Property/Asset Implications	<p>None</p> <p>Contact officer: David Roberts@cheltenham.gov.uk</p>

1. Background

- 1.1 The council’s current licensing policy for private hire and taxis (“taxi policy” hereafter) was adopted in July 2014.
- 1.2 Whilst there is no statutory requirement to undertake a review of the taxi policy, there is a commitment set out in the policy to do so at least once every three years to ensure the policy remains up to date and relevant.
- 1.3 The Cabinet Member for Development and Safety approved a draft policy for consultation in September 2017. A 12 week consultation was undertaken between September and December 2017 and this report sets out the consultation feedback and seeks approval by Cabinet to adopt the proposed revision of the policy as outlined in this report.

2. Licensing Policy, Guidance and Conditions for Private Hire and Taxis

- 2.1 The council is responsible for the licensing and regulation of all hackney carriages (taxis) and private hire drivers, vehicles and operators.
- 2.2 While there is no statutory requirement on the council to have a taxi policy, it is common practice to do so. The taxi policy sets out how the council intends to discharge its functions under the relevant legislation but also acts as a guide to Members, prospective applicants, licence holders and the wider public.

3. Policy Review

- 3.1 A taxi policy review working group was set up by the Licensing Committee in April 2017 to facilitate the review of the policy. Representatives were:
 - Cllr Adam Lillywhite
 - Cllr Paul McCloskey
 - Cllr David Willingham
 - Rob Bates (Starline)

- Leon Jackson (Starline)
- Stuart Hawthorne (Hackney Carriage Assoc)
- Gary Knight (Hackney Carriage Assoc)
- John Donoher (independent HC driver & proprietor)
- Phil Cooper (CBC Licensing Officer)
- Andy Fox (CBC Senior Licensing Officer)

3.2 The working group met on five occasions to consider the proposed changes to the current policy. The feedback and recommendations from the working group have been incorporated in the amended policy and subsequent policy consultation. Copies of the working group minutes are attached at **Appendix 2**.

3.3 A copy of the revised policy is attached at **Appendix 3** incorporating the proposed changes.

4. Consultation and Feedback

4.1 A 12 week public consultation was undertaken on a number of proposed policy changes. In total 39 consultation responses were received. A breakdown of consultation responses are attached at **Appendix 4** of this report.

5. Proposals

Knowledge test

5.1 As part of the fitness assessment for licence holders, applicants are required to pass a knowledge test. This assessment is currently a comprehensive written test on a number of aspects including local geographical knowledge, Highway Code, basic literacy and numeracy and law and conditions.

5.2 Since the last policy review a number of factors relevant to the current local knowledge test have changed which has prompted the need for a review of the current assessment:

- a) The council has introduced a higher standard for its practical driving assessment;
- b) Safeguarding training has been introduced for all licensed drivers and new applicants for a driving licence; and
- c) The council has adopted a dedicated English proficiency policy and assessment service.

5.3 As a consequence, the council is proposing a number of changes to the current knowledge assessment:

- a) Replacing the written Highway Code section of the test with the higher practical driving assessment;
- b) Introducing a learning day covering safeguarding, equality duty, law and conditions with a written/practical assessment at the end of the session;
- c) Retaining the local geographical knowledge and basic numeracy elements of the test; and
- d) Replacing the basic literacy written element of the test with the English proficiency policy and assessment service.

5.4 The majority of respondents supported this proposal. As a consequence it is proposed that Cabinet adopts this policy proposal as set out above.

Three Strikes Policy

5.5 The council is proposing the introduction of a "Three Strikes Policy". The purpose of such a policy is to improve the council's means of dealing with complaints, allegations and witnessed incidents of misconduct or infractions of a type which, individually, are not considered sufficiently serious to justify a review of a person's suitability to hold a taxi or private hire driver, vehicle or operator

licence, but which may give rise to such concerns if repeated or if regarded cumulatively with other such incidents.

- 5.6** The proposed policy lists a number of misdemeanours that, should a licensed driver be found to be in breach of one or more of these, it will be recorded against the driver's licence records. If the driver has at least three of these misdemeanours recorded against their licence, a review of their licence will be called in.
- 5.7** Consultation feedback on this proposal was mixed with a rough 50/50 split. Some respondents noted that the operation of the policy should be fair and a "strike" should only be awarded once a misdemeanour has been verified otherwise the policy will be unfair. Officers will administer the policy under the existing complaints investigation procedure that ensures that complaints are substantiated prior to any formal action being taken. The proposed changes suggested by the Licensing Committee have been incorporated in the draft policy.
- 5.8** It is important for the council to be able to discharge its statutory functions, particularly with regards to the fitness of licensed drivers, properly. It therefore considers the implementation of this policy as necessary and to this extent, Cabinet is recommended to adopt this policy proposal.

Working hours

- 5.9** There are no national standards or statutory regulations that strictly govern working hours for licensed taxi and private hire drivers.
- 5.10** Through the policy review, it has been identified that there may be a need for the council to be proactive in regulating this in so far as it is able and practical. To this end, the following proposed policy changes have been consulted on:
- a) Amending licence conditions to set out a reasonable expectation on working hours for licence holders, implementing a mechanism whereby licence holders may need to keep a record of their working hours and to submit these records to the council; and
 - b) Adopting a code of good practice for licensed drivers setting out the council's expectations on safe working practices and the implications for non-compliance with the code.
- 5.11** Respondents commented on the practical difficulties of enforcing a statutory regulation of working hours for licensed drivers. The council accepts this. However, it considers it necessary, in the interest of public safety, to be clear on what it considers to be safe working practices for licensed drivers.
- 5.12** To this end, it is proposed that the council adopts a code of good practice for licensed drivers setting out its expectations on safe working practices in the trade. In addition to the expectation the code will set, it can also be used more formally in individual cases where it is deemed necessary to maintain public safety.
- 5.13** It is therefore proposed that Cabinet adopts a code of practice that has been incorporated in the draft new policy.

Online criminal records checks (DBS)

- 5.14** The council is proposing to implement a requirement that all future criminal records checks be undertaken online. The council currently accepts paper copies of Disclosure and Barring Service (DBS) certificates. However, the DBS service now offers a convenient online checking service that is both quick and more cost effective for both the council and licence holders.
- 5.15** Some respondents suggested that this policy proposal will incur additional cost on licence holders. However, this is not the case because the online checking service costs a lot less than administering the criminal records check on paper.
- 5.16** The council is increasingly moving towards a paperless operating model. Given that there is a convenient and less costly alternative to paper based checks, it is therefore proposed that Cabinet implements this policy proposal.

Vehicle emissions

- 5.17** The current policy includes an emission policy for licensed vehicles. It is necessary for the council to review its current emissions policy because the current deadline for phasing out older vehicles expires this year.
- 5.18** The purpose of the revised policy is 1) to contribute to the local and national air quality strategy to improve air quality in the town and 2) to have a safe, modern and professional licensed fleet.
- 5.19** To this end, the proposed revised policy is:

New vehicles

- Retain 5 year rule for petrol cars (which will result in an automatic Euro Emissions Standard 5 compliance)
- Apply Euro Emissions Standard 6 for diesel (i.e. vehicles no older than 1/9/2015)
- Any age for Ultra-low emission vehicles - defined as 75g CO₂/km and under

Existing vehicles

Phase out older vehicles so to:

- Get all petrol vehicles to at least Euro 5 standard by 2021
- Get all diesel vehicles to Euro 6 standard by 2021

Given that by 2021 all licensed vehicles will be on the minimum Euro 5 emission standards, the council did not propose a maximum age limit in vehicles provided that they continue to be in exceptional condition and safe.

- 5.20** Consultation feedback on this proposal was mixed. A number of respondents agreed with the implementation of this policy but the majority of respondents did not. However, very few of the respondents who disagreed with this policy change stated reasons for their disagreement and did not present the council with alternatives.
- 5.21** Those who did commented on the proposed transition arrangements for phasing our older vehicles. They pointed out that the council's revised policy did not specify a maximum age limit on vehicles and that the proposed phasing out arrangements may be unfair towards some licence holders.
- 5.22** In response, the council has made revisions to its proposed emissions policy taking into account the comments made. Cabinet is recommended to adopt the revised policy.

Testing arrangements

- 5.23** The council currently only has one approved testing station for licensed vehicles which is Ubico Ltd. It has operated under this policy for several years but a need to review this has arisen. Due to the expansion of Ubico and the growth of the local trade, Ubico's ability to continue to act as sole testing provider within the agreed service level agreement has become increasingly difficult.
- 5.24** This has facilitated a review of the sole use arrangement with Ubico and it is proposed that testing arrangements be opened up to other testing stations that can demonstrate to the council their ability to test to the standard expected by the council.
- 5.25** There was unanimous support for this proposal. To this end, Cabinet is recommended to approve the adoption of additional testing stations for licensed vehicles.

Grandfather rights

- 5.26** Different rules currently exist for hackney carriage vehicle licence holders depending on the licence plate number. A number of hackney carriage vehicle licence numbers have grandfather rights attached to them meaning that as long as the licence remains valid, these vehicles do not have to comply with the council's wheelchair-accessible vehicle ("WAV") policy.

- 5.27** The grandfather rights rules in effect means that those with saloon vehicles can continue to replace their vehicles with non-WAVs for the life of the licence.
- 5.28** This is in contrast to other newer licensed hackney carriage vehicles that do not have retained grandfather rights and which must be a WAV and can only be replaced with another WAV.
- 5.29** The council's Cabinet has indicated that it wants to make changes to the grandfather rights rules to improve the availability to accessible public hire vehicles in Cheltenham.
- 5.30** The council consulted on a number of options with regards to existing grandfather rights. These options were set out in the consultation document:
- a) Amend the grandfather rights so that these only apply to the current licensed vehicles and when the proprietor comes to replace that vehicle they are obligated to purchase a wheelchair-accessible vehicle and/or purpose built taxi;
 - b) Make no changes to the current system;
 - c) Amend the grandfather rights rules so that those who retain it can interchange between saloon cars and wheelchair-accessible vehicles without those rights being affected.
- 5.31** The majority of respondents indicated that they were against making any changes to the current grandfather rights arrangements. It is worth pointing out that whilst the majority of respondents opposed any changes to the existing grandfather rights, very few actually gave further explanation for their opposition and additionally none provided the council with an alternative solution to increase the proportion of public hire WAVs.
- 5.32** The responses from those who did provide further comments with regards to their opposition can broadly be summarised as:
- A 100% wheelchair accessible fleet will discriminate against other people with mobility issues who will find it difficult to get in and out of wheelchair accessible vehicles since these vehicles tend to be higher than, for example, saloon vehicles;
 - Such a policy change will necessitate the replacement of a large amount of vehicles for replacements that are more costly than a normal saloon vehicle;
 - The choice to change vehicles should be that of the individual drivers whilst retaining grandfather rights, in effect retain a mixed fleet;
 - Demand for wheelchair accessible taxis does not exist because people in wheelchairs prefer to use pre-booked vehicles; and
 - The price of vehicles that benefit from the retention of grandfather rights demand a higher resale value than those which do not and as a consequence the change in policy will devalue those vehicles.
- 5.33** The council's Cabinet have indicated that their preferred option was to remove grandfather rights so that the WAV policy applies to all public hire vehicles irrespective of whether they are new vehicles or a replacement of an existing licensed vehicle. Clearly the preferred option must be evaluated in light of the consultation feedback received.
- 5.34** The council is still of the view that it must improve the proportion of accessible vehicles on its public hire fleet. The existing grandfather rights rules have resulted in a very slow increase in the number of public hire WAVs. The increase of public hire WAVs in Cheltenham is almost exclusively down to new vehicles that have had to comply with the council's WAVs policy.
- 5.35** At present, only 22% of licensed hackney carriage vehicles are WAVs. According to the DfT's official statistics, Cheltenham's proportion of accessible public hire vehicles is below the regional average (30%) and substantially below the national average (58%).
- 5.36** In addition to this, the council needs to be mindful of a number of other relevant issues.
- 5.37** Under the Council's public sector equality duty it has a statutory duty in the exercise of its functions, to have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

5.38 The equality duty covers the nine protected characteristics including age and disability.

5.39 The Government has made it clear that it expects local authorities to be proactive in improving the access to public hire vehicles. The Government's revised draft Accessibility Action Plan published in August 2017, for example, outlined proposals to strengthen its statutory guidance to local authorities that will seek "to increase the number of accessible vehicles" and "consult on best practice guidance for taxi and PHV licensing authorities, which will include strengthened recommendations on supporting accessible service...".

5.40 The revised updated guidance from the Department for Transport (DfT) has not, to date, been published. The current DfT guidance (March 2010) however states: "...it is for individual licensing authorities to reach their own decisions both on overall policies and on individual licensing matters, in the light of their own views of the relevant considerations. This Guidance is intended to assist licensing authorities but it is only guidance and decisions on any matters remain a matter for the authority concerned."

"Different accessibility considerations apply between taxis and PHVs [private hire vehicles]. Taxis can be hired on the spot, in the street or at a rank, by the customer dealing directly with a driver. PHVs can only be booked through an operator. It is important that a disabled person should be able to hire a taxi on the spot with the minimum delay or inconvenience, and having accessible taxis available helps to make that possible. For PHVs, it may be more appropriate for a local authority to license any type of saloon car, noting that some PHV operators offer accessible vehicles in their fleet."

5.41 The council is mindful of the fact that the DfT guidance is not statutory guidance but it must nonetheless be mindful of it.

5.42 The council remains of the view that it must act to improve the proportion of public hire accessible vehicles. In light of the lack of alternative proposals put forward by respondents during the consultation, the council has taken the view that it has no other alternative approach to take in order for it to improve the number of public hire accessible vehicles available in Cheltenham.

5.43 To this end, it is proposed that the council adopts its preferred option referred to above.

5.44 Cabinet must be mindful of the Licensing Committee's view on this too. The committee acts as lead consultee on these matters. The committee was not in unison on the issue of changes to grandfather rights. The majority (4) of the committee voted in favour of option C (see. 5.30) with the remaining Members (3) voting in favour of option A. The committee did comment that it thought a more proportionate implementation of the policy change would be when affected vehicles are replaced as opposed to when they are due for renewal. They did however acknowledge that that approach will extend the implantation of the policy by many years.

5.45 The council acknowledges that WAVs may have ambulatory accessibility issues. However, there are no current accessibility standards that apply to vehicles other than WAVs. This has left the council with no real alternatives. Furthermore, the council is aware that a number of other local authorities have already adopted a 100% WAV policy.

5.46 The council is minded that any change to grandfather rights needs to be proportionate to manage the impact of such a policy change on the licensed trade. The trade has highlighted the fact that the council's preferred option will necessitate the replacement of a large amount of licensed vehicles. Respondents to the consultation suggested that replacement vehicles can cost anything from £10,000 to upwards of £30,000 which is significantly more than what it will cost to replace a saloon type vehicle with another saloon vehicle.

5.47 This policy review also includes proposals for adopting higher emission standards for licensed vehicles. The proposed emissions policy will in itself require some vehicles to be replaced in accordance with the proposed implementation period.

5.48 To this end, the council is proposing to phase in the changes to the grandfather rights rules. It is

proposed that it will implement the new policy requirements by 2021 which means that all public hire vehicles licensed by the council will be required to comply with the council's WAV policy by this date. The council considers a 4 year implementation period to be proportionate.

- 5.49** The council acknowledges the trade's feedback that people in wheelchairs do not tend to use hackney carriage vehicles preferring instead to pre-book a licensed vehicle and so there is no need for the grandfather rights to be changed. Whilst this may be the case as far as it relates to designated ranks, the council is aware that hackney carriages also undertake private hire work for the companies that fulfil these pre-booked journeys. To this extent users of wheelchairs do regularly use licensed hackney carriages.
- 5.50** Finally, respondents have highlighted the implications a change to grandfather rights will have to the "value" of their business investment.
- 5.51** Whilst the council is mindful of this, licence plates remain the property of the council and to that extent it carries no value. The "value" attached to the economic benefit of having a licence is an unofficial one.
- 5.52** The council is of the view that the purpose of the licensing regime is not to provide an economic benefit to licence holders but to provide a safe and well-managed local transport service to passengers. To this extent the council does not consider this to be a relevant consideration. In any event, it has been pointed out in common law that circumstances and policies are subject to change and a licence holder will have made a business judgment about whether a certain price was worth paying, and took a business risk. A licence holder could not have reasonably or legitimately expected that a "premium" was protected against the possibility of a future policy change.

Vehicle standards and specifications

- 5.53** A review has been undertaken of the council's suitability standards for vehicles to be licensed.
- 5.54** The policy review sought views on the suitability of rear loading wheelchair accessible vehicles to continue to be licensed.
- 5.55** The council's current policy permits both side-loading and rear loading wheelchair accessible vehicles. The review was prompted by comments submitted by the public hire trade.
- 5.56** The main arguments in favour of disallowing rear loading wheelchair accessible vehicles to be licensed relates to safe access and egress from such vehicles.
- 5.57** It has been pointed out that in order for a wheelchair passenger to enter a rear-loading vehicle, it is necessary for them to be moved into the road either facing, or with their back to, oncoming traffic. This also requires the wheelchair user to be manoeuvred down a kerb which can cause further injury, pain or discomfort to some wheelchair users if not done with care.
- 5.58** Wheelchair passengers in a rear-loading vehicle are seated at the back in the rear impact zone and are therefore at higher risk of injury in the event of an accident. Where the rear doors or tailgate of the vehicle are damaged it would be impossible for a wheelchair user to escape whilst in their wheelchair.
- 5.59** A review of the suitability of continuing to license rear loading wheelchair accessible vehicles has been undertaken including taking into account comments submitted during the consultation period.
- 5.60** Whilst difficulties with rear loading vehicles have been highlighted, there are also some advantages to these types of vehicles that must be considered:
- Rear loading vehicles generally offer more headroom for passengers who would otherwise be forced to bend their head to enter in to a vehicle from the side particularly for larger type of wheelchairs.
 - Passengers loaded into a vehicle from the rear will immediately be facing the front or the back. This is in contrast with side loading vehicles where a wheelchair entered into the vehicle from the side will be required to be turned to a 90 degree angle to face the front or

back. It is important the wheelchair faces the front or back so that it can be secured and the brakes applied. If the chair remained facing sideways it is likely that it would tip over in the event of ascending or descending a steep incline or if the taxi was forced to break suddenly.

- Rear loading vehicles are considered to be more beneficial to drivers in that it is easier to load and secure the wheelchair without being responsible for moving the passenger as much as is required when fitting a wheelchair into a side loaded vehicle.

- 5.61** Clearly any policy decision must be evidence based. Since the policy changed 4 years ago, the council have not had any substantiated recorded complaints from passengers complaining about access issues when using rear loading vehicles.
- 5.62** The Law Commission published a report in 2014 on taxi and private hire law reform. The report was published after extensive consultation.
- 5.63** The report stated: "Many wheelchair accessible vehicles are rear-loading, and some passengers prefer that. Others, however, prefer a side-loading vehicle. From a safety point of view a rear-loading vehicle can present problems because the passenger can only access the vehicle from the road. This means that a longer ramp is required because the kerb cannot be used, which can present access problems...it is our view that a mixed fleet would, in general, more appropriately meet the needs of disabled people. It is clear that one size does not fit all...Even amongst those who use wheelchairs there are different requirements. This is one of the reasons why the Department for Transport has found it so difficult to identify a "universal" vehicle in order to implement provisions in the Equality Act 2010 and make regulations on taxi accessibility."
- 5.64** The Law Commission's report concluded that "...we recommend that authorities should aim to ensure a mixture of different types of taxi in their area."
- 5.65** Locally, a large number of rear loading wheelchair accessible vehicles also undertake private hire work. It has been noted that the public hire trade commented that wheelchair users prefer to use pre-booked services and tend to not use taxi ranks. It may be for this reason that access difficulties associated with rear loading vehicles working off a taxi rank has been minimal.
- 5.66** The review undertaken by officers has concluded that both types of vehicles (rear and side loading) pose problems and different types of vehicle are preferred by various wheelchair users. There is therefore no consensus as to what are the most suitable vehicles for wheelchair users.
- 5.67** To this end, it is not proposed that the council makes any changes to its policy on the suitability of rear loading vehicles. The council will keep this policy under review to keep it in line with best practice and Government guidelines.

Equality Act 2010: Taxi and private hire requirements

- 5.68** The council is seeking to implement the new statutory requirements placed upon it by the newly enacted section 167 of the Equalities Act 2010 as part of this policy review.
- 5.69** Section 167 places a new duty on the council to provide a list of wheelchair accessible hackney carriages and private hire vehicles for publication. It also places certain obligations on drivers of vehicles on this list to carry wheelchair users and not to impose any additional charges for doing so.
- 5.70** The legislation leaves it to the council to decide what type of licensed vehicles should be included on the designated list. The statutory guidance however makes it clear that these must be vehicles capable of carrying wheelchairs.
- 5.71** To this end, the council has taken a view similar to that recommended by the statutory guidance whereby all vehicles licensed by this council to carry, as a minimum requirement, a "reference wheelchair" will be added to the designated list.
- 5.72** This list will be published in order for people who require the services of a wheelchair accessible vehicle to easily find this information.
- 5.73** The majority of respondents either support this proposal or offered no comment. It is therefore proposed that Cabinet adopts this proposal.

Licensed Operators Conditions

- 5.74 There is an increasing issue of out of town vehicles working in Cheltenham due to the relaxation of out of district sub-contracting rules.
- 5.75 The council cannot enforce against vehicles and drivers not licensed by it (unless it is a criminal offence committed). It is therefore proposed that the council amend its conditions for licensed private hire operators to introduce a new requirement on them that, when they subcontract a booking to an operator not licensed in Cheltenham, they take all reasonable steps to ensure that the vehicle dispatched is not silver. The rationale behind this is to try to avoid members of the public confusing out of town vehicles with Cheltenham’s predominantly silver hackney carriage fleet.
- 5.76 Respondents commented on the practical difficulties the council may have in enforcing such a condition. Furthermore, comments were also submitted commenting on the practical implications of such a condition due to the fact that the council cannot control the operation of operators outside its boundaries.
- 5.77 Taking this into account, it is not proposed that the council adopts this policy proposal.

6. Reasons for recommendations

- 6.1 To ensure the council continues to comply with its statutory duties and able to maintain a safe, accessible and well managed taxi and private hire service in Cheltenham.

7. Alternative options considered

- 7.1 Cabinet can decide not to adopt all or some of the proposals put forward. The implications of the alternative options are set out in the report.

8. Performance management – monitoring and review

- 8.1 The performance of the policy changes will be measured by its implantation and the implications of these changes as outlined in the report.

Report author	Contact officer: Louis Krog, louis.krog@cheltenham.gov.uk, 01242 262626
Appendices	<ul style="list-style-type: none"> 1. Risk Assessment 2. Minutes of working group meetings 3. Draft revised policy 4. Consultation feedback
Background information	<ul style="list-style-type: none"> 1. Consultation responses 2. Local Government (Miscellaneous Provisions) Act 1976 3. Taxi and private hire vehicle licensing: best practice (March 2010) 4. Licensing Policy: Private Hire And Taxis Operating within the Borough of Cheltenham (July 2014)

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If Cabinet does not implement the proposed changes to its emissions policy, it risks slipping on its local air quality management plan.	Director of Environment	March 2018	2	3	6	Accept	Approve adoption of revised policy that includes measures to address AQ in taxi/PH licensing.	Throughout life of policy	Licensing Team Leader	N/A if the recommendations of this report are agreed.
	If Cabinet does not adequately address relevant equality issues associated with the regulation of the trade then it risks failing in its public sector equality duty.	Director of Environment	March 2018	3	3	9	Accept	Approve adoption of revised policy that includes measures to address equality issues associated with the regulation of the trade.	Throughout life of policy	Licensing Team Leader	N/A if the recommendations of this report are agreed.
	If Cabinet fails to approve a review of this policy there is a risk that the policy will become out of date and irrelevant. This may result in the council being unable to effectively discharge its functions which could have an adverse effect on public protection.	Director of Environment	March 2018	3	3	9	Accept	Approve adoption of revised policy.	Throughout life of policy	Licensing Team Leader	N/A if the recommendations of this report are agreed.

	If Cabinet does not approve reasonable implementation periods for these policy changes, particularly those that will have a significant impact on licence holders, then it risks legal challenges on the grounds of proportionality and reasonableness.	Director of Environment	March 2018	3	4	12	Accept	Ensure policy implementation periods are managed properly.	Throughout life of policy	Licensing Team Leader	N/A if the recommendations of this report are agreed.
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Explanatory notes

Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)

Likelihood – how likely is it that the risk will occur on a scale of 1-6
(1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)

Control - Either: Reduce / Accept / Transfer to 3rd party / Close

Cabinet**Tuesday, 6th March, 2018****6.00 - 6.50 pm**

Attendees	
Councillors:	Steve Jordan (Leader of the Council), Flo Clucas (Cabinet Member Healthy Lifestyles), Chris Coleman (Cabinet Member Clean and Green Environment), Peter Jeffries (Cabinet Member Housing), Andrew McKinlay (Cabinet Member Development and Safety) and Roger Whyborn (Cabinet Member Corporate Services)
Also in attendance:	Councillor Matt Babbage and Councillor David Willingham

DRAFT Minutes**4. PUBLIC AND MEMBER QUESTIONS AND PETITIONS**

1.	Question from David Chambers, Cheltenham Taxi Drivers Association 2016, to the Cabinet Member Development and Safety, Councillor Andrew McKinlay
	<p>Grandfather Rights</p> <p>For many many years now there has only been a limited amount of Hackney vehicle licences (plates) available within the borough (currently 186) so anyone wishing to enter the trade would seek to buy an existing business, this traditionally involves the purchaser buying a licensed vehicle from an existing driver. The ownership of that vehicle would then be registered with licensing and from that point would enable the new owner to transfer that vehicle license (plate) to any other vehicle they may own. The average cost of buying a business over the past 5 years has been £10,000 but at it's peak reached £15,000. This practice has been accepted by the council for over 20 years and has worked well but now they wish to overturn it. The implications of this would mean that drivers that have invested in their business would see the value of their business disappear over night. Many of the drivers that have invested have done so knowing that the value of their business could be used towards a retirement fund or as a life insurance policy for their loved ones should anything happen to them.</p> <p>Our question is: Have the members of this cabinet been properly informed as to the current and historic licensing practices and are they comfortable knowing that if they decide to vote in favour of discontinuing the practice known as grandfather rights they will potentially wipe off in excess of £1,800,000 worth of value to the 180 plus business owners (taxi drivers) of this town and leave them with a depleted pension fund and /or with no life insurance ?</p>
	Response from Cabinet Member
	Cabinet is fully aware of the historical issues relevant to the public hire

	<p>trade in Cheltenham including the previous cap on the number of licence issues in respect of hackney carriage vehicle licences and the consequence this cap had on the “value” of licence plates. Members have had numerous meetings with the trade directly where this has discussed at length and have been briefed by officers.</p> <p>The Cabinet report recognises implications of a decision to remove grand-father rights relevant to hackney carriages. The implications relate to both the cost of replacing vehicles and the impact this policy change will have on the “premium” that plate have demanded in the past.</p> <p>In respect of the first point, Cabinet will agree a series of measures to mitigate the impact of this policy change on licence holders including a proportionate implementation period of 4 years and the ability for some licence holders, who are required to replace their vehicles, to re-licence their vehicles as private hire vehicles.</p> <p>With regards to the second point, the council’s position and view is set out in paragraphs 5.50 to 5.52 of the report.</p> <p>In a supplementary question Mr Chambers asked whether the Cabinet completely understood the full implication of the withdrawal of grandfather rights.</p> <p>In response the Cabinet Member said that this concerned the assumed value of the plate. He explained that there was established case law from Liverpool which stated that the role of the licensing committee was to ensure safety through the licence and no account should be taken of the present value of the said licence as the valuation had been put on it by the purchase of the plate. In any case the plate was owned by the Council rather than the owner of the licence. Therefore, legally speaking the perceived loss of the vehicle was not a relevant consideration. The Leader advised that in this instance he would use his discretion and enable Mr Chambers to address the Cabinet Member further. When asked by Mr Chambers whether he had reviewed case law around the country whereby councils had admitted the value of the plate the Cabinet Member stated that the value of the plate varied according to what value owners placed on it and according to legal advice received this was not a valid consideration. Mr Chambers then referred to the situation in Northern Ireland whereby plates had been overvalued significantly resulting in a two tier system and when one system had been proposed this was overturned and the values accepted. In addition reference was made by the Cheltenham Taxi Drivers Association to advice from the Law Commission in 2013 regarding grandfather rights which acknowledged that this was accepted practice and should be upheld. In response the Cabinet Member Development and Safety reiterated that this was not the legal advice this Cabinet had received.</p>
<p>2.</p>	<p>Question from David Chambers, Cheltenham Taxi Drivers Association 2016, to the Cabinet Member Development and Safety, Councillor Andrew McKinlay</p>
	<p>Disabled access vehicles</p>

	<p>The proposal to make all Taxis in the town disabled access is within its self discriminative to both able bodied and disabled alike. Many disabled passengers wish to be treated the same as any other person and do not wish to bring attention to themselves. There should be freedom of choice for the public. There are dedicated companies who specialise in disabled transport and this would be the reason there are very few wheelchairs who actually use public hire disabled access vehicles. Some drivers that have obtained free access to the trade by having a wheelchair accessible vehicle despite having these vehicles for years, have never picked up a wheelchair. We have also had regular able bodied customers that refuse to get in these vehicles.</p> <p>We recently made a request to the council to stop issuing any more plates to these vehicles as the town is now swamped with taxis, and the vehicles being licensed are (in our view) not fit for purpose, but we were told they could not do this without an unmet demand survey which the trade would have to pay for, yet it is proposing to make all vehicles disabled access without doing the unmet demand survey they were insisting on. There has also not been an affordability study in relation to the costs involved to the trade, Councillor McKinley has said we can buy a used disabled access vehicle for about £7000 but that is for the vehicles that they are proposing to stop licensing (rear loading vehicles)and they do not meet the up coming Euro 6 emissions standards, currently vehicles meeting the councils criteria are in the region of £30,000 which is out of the reach of most drivers. Also the government actually recommend a mixed fleet of vehicles (Plymouth council can be used as an example of this).</p> <p>The secondary impact this ruling would have is to impose the end of grandfather rights (as described in question 1) as all disabled access vehicles can get a plate from the council. It is our view this is a stealth attempt to change the grandfather rites issue should the first proposal fail. Our question is:</p> <p>Do the members of this cabinet believe that a complete fleet of disabled taxis are required in what is a town not a city, and do they agree that to vote for this proposal without the presence of an unmet demand survey would be wrong as there is no evidence this policy is needed ?</p>
	<p>Response from Cabinet Member</p>
	<p>“Cabinet remains of the view that the council needs to be proactive in improving accessibility standards for the travelling public in Cheltenham. Grandfather rights have caused a stagnation of growth of accessibility standards. Cabinet is of the view that Government have been clear that local councils need to be proactive in improving accessibility standards.</p> <p>Through consultation the council have looked at various options giving consideration to the representations made to the council. Given the complexities of the issues relating to grandfather rights, the council is considering a wide range of views and evidence in coming to its policy conclusions and would not wish to limit itself to a single piece of evidence.”</p> <p>In a supplementary question Mr Chambers asked how a decision could be made with regard to disabled access vehicles without having</p>

<p>undertaken an unmet demand survey. In response the Cabinet Member explained that if it was proposed to limit numbers of vehicles there would be a requirement to undertaken such a survey. However, this proposal was for all vehicles to be wheelchair accessible and a survey was not required. Mr Chambers questioned this anomaly and stated that this issue had not been discussed with any of the relevant interested parties as to whether wheelchair accessibility was required to such a degree. He said that surely it was better to have more variety of taxi vehicles in the town. In response the Cabinet Member referred to case law 007 STRATFORD TAXIS LIMITED and STRATFORD ON AVON DISTRICT COUNCIL which was considered by the Court of Appeal in 2011. This made the point that an unmet demand survey was not required.</p>

5. REVIEW OF TAXI AND PRIVATE HIRE LICENSING POLICY

The Cabinet Member Development and Safety introduced the report and explained that the council's current licensing policy for private hire and taxis was adopted in July 2014. Whilst there was no statutory requirement to undertake a review of the taxi policy, there was a commitment to do so at least once every three years to ensure it remained up to date and relevant. He reported that a 12 week consultation took place between September and December 2017, the responses to which were reproduced in Appendix 4. In addition a taxi policy review working group was set up by the Licensing Committee in April 2017 to facilitate the review of the policy; it had met 4 times and the minutes of their meetings were included in Appendix 2. The proposed revised policy was included at Appendix 3.

The Cabinet Member then summarised the proposals-

- Knowledge test-a number of changes to the current knowledge assessment were being proposed including replacing the written Highway Code section of the test with the higher practical driving assessment; introducing a learning day covering safeguarding, equality duty, law and conditions. All the proposed changes aimed to improve safety so that licenced drivers were fully aware of the duties and responsibilities in law so the council could be confident that Cheltenham taxi drivers were some of the best in the country.
- Three Strikes Policy-the purpose of this policy was to improve the council's means of dealing with complaints, allegations and witnessed incidents of misconduct or infractions or a type which individually were not considered sufficiently serious to justify a review of a persons suitability to hold a taxi or private hire driver, vehicle or operator licence, but which may give rise to such concerns if repeated or if regarded cumulatively with other such incidents.
- Working Hours-Whilst it was acknowledged that this would be hard to enforce on an hourly basis, the point was to lay down expectations of what constituted safe working practices
- Online criminal records checks (DBS)
- Vehicle emissions-the proposed revised policy for new vehicles was to retain 5 year rule for petrol cars (Euro Emissions Standard 5

compliance), Euro Emissions Standard 6 for diesel and any age for ultra-low emission vehicles-defined as 75g CO₂/km and under. The proposed revised policy for existing vehicles was to phase out older vehicles so to get all petrol vehicles to at least Euro 5 standard by 2021 and get all diesels vehicles to Euro 6 standard by 2021

- Testing arrangements-privately contracting additional testing stations for licensed vehicles
- Grandfather rights-different rules currently existed for hackney carriage vehicle licence holders depending on the licence plate number. A number of hackney carriage vehicle licence numbers had grandfather rights attached to them meaning that as long as the licence remained valid, these vehicles did not have to comply with the council's wheelchair-accessible vehicle (WAV) policy. The council had consulted on a number of options with regards to existing grandfather rights : a) to amend them so that they only applied to current licensed vehicles and when the proprietor came to replace that vehicle they were obligated to purchase a wheelchair accessible vehicle and/or purpose built taxi; b) make no changes to the system c) amend the grandfather rights rules so that those who retained it could interchange between saloon cars and wheelchair-accessible vehicles without those rights being affected. The Cabinet Member explained that the majority of respondents indicated that they were against making any changes to the current arrangements but very few gave no further explanation for their opposition and additionally none provided the council with an alternative solution to increase the proportion of public hire WAVs. At present only 22% of licensed hackney carriage vehicles were WAVs which was one of the lowest rates in the country. He explained that the Cabinet's preferred option was to remove grandfather rights so that the WAV policy applied to all public hire vehicles. The preferred option must be evaluated in light of the consultation feedback received. The council was still of the view that it must improve the proportion of accessible vehicles on its public hire fleet and the existing grandfather rights rules have resulted in a very slow increase in the number of public hire WAVs. The increase of public hire WAVs in the town was almost exclusively down to new vehicles that have had to comply with the council's WAV policy. The council also needed to be mindful of a number of other relevant issues. Under the Council's public sector equality duty it had a statutory duty in the exercise of its functions, to have due regard to :
 - Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
 - Advance equality of opportunity between people who share a protected characteristic and those who do not
 - Foster good relations between people who share a protected characteristic and those who do not.

The Cabinet Member explained that the equality duty covered the nine protected characteristics including age and disability. The Government had made it clear that it expected local authorities to be proactive in improving the access to public hire vehicles and its revised draft Accessibility Action Plan published in August 2017 outlined proposals to strengthen its statutory

guidance to local authorities that would seek to “increase the number of accessible vehicles” and consult on best practice guidance for taxi and PHV licensing authorities, which will include strengthened recommendations on supporting accessible service...”. The Cabinet Member went on to say that the current DfT guidance stated that it was for individual licensing authorities to reach their own decisions both on overall policies and on individual licensing matters, in the light of their own views of the relevant considerations. This guidance was intended to assist licensing authorities but it was only guidance and decisions on any matters remained a matter for the authority concerned. “Different accessibility considerations apply between taxis and PHVs [private hire vehicles]. Taxis can be hired on the spot, in the street or at a rank, by the customer dealing directly with a driver. PHVs can only be booked through an operator. It is important that a disabled person should be able to hire a taxi on the spot with the minimum delay or inconvenience, and having accessible taxis available helps to make that possible. For PHVs, it may be more appropriate for a local authority to license any type of saloon car, noting that some PHV operators offer accessible vehicles in their fleet.” The Cabinet Member highlighted that the council must therefore be mindful of the guidance.

- Vehicle standards and specifications-there were no proposed changes to policy on the suitability of rear loading vehicles and the council would keep this policy under review to keep it in line with best practice and Government guidance.

In summing up the Cabinet Member wished to emphasise that full and proper consideration had been given to the review and consultation responses that whilst there were some issues the majority of the policy changes were not contentious and represented a sensible way forward.

The following questions were raised by Cabinet and responses given :

- Nationally, compliance with wheelchair accessibility was 58% and this was expected to rise over the next few years with the aim in Cheltenham of 100 % compliance by 2021. In terms of process the Cabinet Member Development and Safety explained that the council always sought to change policy with consent rather than imposition and therefore there would be dialogue with interested parties including the licensed trade and users e.g. disability groups to discuss how compliance could be achieved within this timeline. At a minimum this would include assessing the impact on the future livelihood of licensed taxi drivers and cost of changing vehicles. He reiterated that the aim of the proposal was to maximise the opportunities to have WAVs in use without unnecessarily putting drivers out of business. The long term aim was 100% compliance and the best taxi drivers in the country.
- When asked whether Government would deem the council’s full compliance target of 2021 as too slow the Cabinet Member stated that the Government’s revised draft Accessibility Action Plan published in August 2017 had made reference to councils being slow to act and Cheltenham was well below the national average. It was not unlikely

therefore that guidance and or legislation may be brought forward sooner on this.

- In terms of whether the Cabinet Member was confident that the policy was enough to satisfy safeguarding issues he highlighted that training and expectations of drivers well exceeded that of neighbouring authorities and the policy complied with Government guidance on safeguarding. He emphasised that the trade had been cooperative in ensuring compliance with this and he remained confident that the town had high quality of taxi drivers.
- Case law had found the issue of WAVs being less accessible to be a misnomer and that WAVs were a major aid to disability access.

Finally, the Cabinet Member Development and Safety highlighted that he had considered carefully all the responses to the consultation. He believed this policy to be a positive step forward. It was unacceptable that Cheltenham was the worst in the county in terms of the provision of disabled access taxi transport. Going forward the Licensing Team Leader would contact all interested parties for a series of meetings to discuss how compliance could be achieved.

RESOLVED (unanimously) THAT

- 1. the consultation feedback received be noted;**
- 2. the revised policy attached at Appendix 3 of this report be adopted;
and**
- 3. authority be delegated to the Director of Environment to take the steps necessary to implement the policy changes.**

Chairman

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