

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:</p> <p>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.</p> <p>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>
2.	<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>

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.

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