

Cheltenham Borough Council
Cabinet – 25 September 2012
Licensing of Rickshaws in Cheltenham

Accountable member	Cabinet Member Housing and Safety - Councillor Peter Jeffries
Accountable officer	Director of Wellbeing & Culture – Sonia Phillips
Ward(s) affected	All
Key Decision	No
Executive summary	<p>On Tuesday, June 19th Cabinet approved, in principle to support the licensing of rickshaws in Cheltenham and further to approve a draft policy for consultation.</p> <p>A consultation on the approved draft policy was undertaken between June and July and twelve responses were received.</p> <p>Cabinet is asked to review these comments, decide if it would approve such a licensing scheme for Cheltenham and, if applicable, approve the draft policy for adoption by Full Council subject to any trial period it may wish to impose.</p>
Recommendations	<p>Cabinet is RECOMMENDED to;</p> <ol style="list-style-type: none"> 1. Consider the comments submitted by the consultee respondents, and 2. Approve the licensing of rickshaws in Cheltenham subject to a recommended trial period of 2 years, and 3. Approve and recommend the adoption of licensing scheme and draft policy by Full Council.
Financial implications	<p>There are no financial implications arising from this report.</p> <p>Contact officer: Sarah Didcote, sarah.didcote@cheltenham.gov.uk, 01242 26 4125</p>
Legal implications	<p>The Council is responsible for the licensing of Hackney Carriages within the Borough of Cheltenham. Rickshaws fall under the definition of Hackney Carriages. As part of the licensing regime the Council can introduce policies which provide guidance on the requirements that the Council will seek when determining applications for Hackney Carriages.</p> <p>Contact officer: Sarah Farooqi, sarah.farooqi@tewkesbury.gov.uk, 01684 272693</p>
HR implications (including learning and organisational development)	<p>No direct HR implications arising from this report.</p> <p>Contact officer: Julie McCarthy, julie.mccarthy@cheltenham.gov.uk, 01242 26 4355</p>

Key risks	As outlined in Appendix 1
Corporate and community plan Implications	<p>Carbon emissions are reduced and Cheltenham is able to adapt to the impacts of climate change.</p> <p>Cheltenham has improved access and travel options.</p> <p>Unemployed people are able to access employment and training.</p> <p>Attract more visitors and investors to Cheltenham.</p>
Environmental and climate change implications	Rickshaws offer an environmentally friendly alternative form of public transport.

1. Background

- 1.1 On Tuesday the 19th of June 2012 Cabinet approved, in principle, to support the licensing of rickshaws in Cheltenham and further to approve a draft policy for consultation.
- 1.2 Consultation with key stake holders, responsible authorities and the Hackney Carriage trade was undertaken and comments from 12 consultees were received, one of which was also supported by 64 signatories.
- 1.3 The respondents were:
- PC Andy Cook – Force Licensing Manager for Gloucestershire Constabulary
 - Mr Owen Parry - Integrated Transport & Parking Manager for Cheltenham Borough Council
 - Mr Chris Riley – Highways Manager (Cheltenham & Bishops Cleeve) for Gloucestershire Highways
 - Mr Martin Quantock - Cheltenham Business Partnership Manager
 - Cheltenham Borough Council's Licensing Committee
 - Mr Gary Handley – Driver Training Manager for the Gloucestershire Road Safety Partnership
 - Ms Diane Mitten – Hackney Carriage Licence Holder & Secretary of the Cheltenham Hackney Carriage Association
 - Mr Dick Hibbert – Hackney Carriage Licence Holder. Mr Hibbert commented on behalf of 64 other licensed Hackney Carriage licence holders.
 - Mr Mark Buckland - Hackney Carriage Licence Holder
 - Mr John Donoher - Hackney Carriage Licence Holder
 - Mr Mariusz Antosiewicz - Hackney Carriage Licence Holder
 - Mrs Linda Camp – Rickshaw Revolution

2. Consultation Feedback

- 2.1 A consultation on the approved draft document was undertaken between June and July 2012. An overview of issues raised by respondents is listed below. Copies of the actual responses received together with a breakdown of the proposed policy changes are attached at **Appendix 2**.
- 2.2 The two primary issues of concern raised by respondents were safety and congestion.

Safety

- 2.3 Seven of the twelve respondents expressed concerns over the safety of rickshaws including;
- Passenger safety issues as a result of collisions with other vehicles, passengers or other accidents,
 - Potential handling problems and difficulties in adverse weather conditions,
 - General safety concern should rickshaws become subject to anti-social behaviour during late night operation,
 - The effectiveness of the passenger seatbelts installed in rickshaws, and

- Concern associated with reaction times by riders to avoid collisions and other accidents.

2.4 In reference to the above, Gloucestershire Constabulary pointed out that rickshaws offer virtually no passenger protection against a road traffic collision which will inevitably lead to serious injury or worse. A number of respondents also pointed out that the risk of reckless overtaking by vehicles particularly in the town centre is likely given the traffic flow arrangements and the narrow roads. Such reckless overtaking would put riders and passengers at risk.

2.5 The Constabulary has submitted additional documents from the City of Westminster detailing accidents involving rickshaws to supplement their comments. These are attached at **Appendix 3** of this report.

Congestion

2.6 Six of the twelve respondents highlighted concern over congestion that could be caused by rickshaws. In particular mention was made of the Promenade leading up to Montpellier because of the incline and the bottle neck caused by the central reservations by the Queens Hotel. The other areas of concern were the town centre ring road and Clarence Street.

2.7 The respondent's concerns can be summed that congestion would cause tailbacks, other road users being unable to overtake which in turn could result in frustrated road users and the increased risk of collisions and accidents as a result of reckless overtaking.

2.8 Finally, one respondent stated that the environmental benefits of rickshaws will be counteracted by the higher emission caused by vehicles queuing behind rickshaws and travelling at a slower speed.

Other Comments

3.7 Other issues raised by respondents are;

- The already over supply of public transport services in Cheltenham (1 respondent),
- Support for the proposals relating to the prohibition of rickshaws on pedestrianised areas (2 respondents),
- Use of the cobbled area on Clarence Parade (1 respondent),
- The classification of rickshaws as Hackney Carriages and the accompanying statutory implications (1 respondent),
- Concern over the proposed approach to advertising for rickshaws (1 respondent),
- The restrictive proposed area of operation (2 respondents),
- Concern over the proposed fare structure and arrangements (1 respondent), and
- Concern that the one-way traffic system will encourage non-compliance with road signs (1 respondent).

3. Officer Comments

Safety

3.1 Public protection and safety is of paramount concern and underpins the entire licensing process. To this end, the Council must be satisfied that the licensing of these vehicles will not undermine

public safety.

- 3.2 In assessing the risks associated with public safety, Members must take into account the potential affect but also the likelihood of it occurring in the first instance.
- 3.3 Being a new and untested form of transport in Cheltenham, it is difficult to effectively assess or quantify the likely safety implications of such a scheme beyond speculation at this stage. It is worth bearing in mind that although the scheme is new in Cheltenham, other towns have licensed rickshaws for many years and to that extent this mode of transport has largely proven viable. However, respondents have alluded to a recent decision by Edinburgh City Council to suspend the issue of new rickshaw licences following the death of a passenger who jumped out of a moving rickshaw and sustained fatal head injuries. Attached at **Appendix 4** is a copy of the article.
- 3.4 To aid Members in understanding the safety implications of licensing rickshaws and therefore also to enable Members to make an informed and balanced decision, enclosed at **Appendix 5** is a rickshaw safety evaluation report produced by TRL Limited, an independent transport research, consultancy and testing company, for the Licensed Taxi Driver's Association in 2004. This report covers all of the safety issues raised by the respondents including the effect of adverse weather, handling, collision and the effectiveness of passenger seatbelts.
- 3.5 Clearly Members need to bear in mind that the report was produced in 2004 and Members will therefore need to attach appropriate weight to its findings and conclusions. However it seems that the report is the only one of its kind on the subject but does, nonetheless, provide a general overview of the types of safety risks and outcomes associated with rickshaws.
- 3.6 Members are to note that the Council does have the powers to immediately suspend the licence of any vehicle should that vehicle become unfit to continue to be licensed. In this case, if it appears that public safety is being compromised through the licensing of rickshaws, it can invoke this power.

Congestion

- 3.7 As identified in the draft policy, Cheltenham does offer a unique issue with regards to traffic and highway related issues, most notably, the fact that the majority of the town centre is entirely pedestrainised, the one way system in operation, the narrow roads making overtaking very difficult and the incline & bottleneck travelling from the Promenade to Montpellier.
- 3.8 Again, being a new and untested mode of transport in Cheltenham it is not possible to accurately assess the likely effect rickshaws will have on congestion bearing in mind the factors mentioned above.
- 3.9 Officers recommend that the issue of congestion be monitored should Cabinet approve this scheme subject to a trial period and feedback on related issues can be reported at the end of the trail period for further consideration.

Other Comments

- 3.10 **No unmet demand to justify more public transport services** – Although the Council have discretionary powers under the provisions of the Town Police Clauses Act 1847 to limit the number of Hackney Carriage licences it will issue, under section 16 of the Transport Act 1985, it can only exercise that discretion if, and only if, the Council is satisfied that there is no significant demand for the services of hackney carriages which is unmet.
- 3.11 Furthermore, the Department for Transport (“DfT”) guidance to Local Authorities considers it best practice not to limit the number of licences that are issued in respect of hackney carriages and although the Council is not obligated to have regard to the DfT guidance, it is necessary to give

due consideration to it nonetheless.

- 3.12** Finally, in order for the Council to exercise its discretionary powers to limit the number of hackney carriage it issues, it must have evidence to support such an action. An unmet demand survey is generally required to justify such a decision and in the absence of such a study, it is not recommended that Cabinet refuse to licence rickshaws on the grounds of unmet demand.
- 3.13 Use of pedestrianised areas** – It is proposed in the draft policy that licensed rickshaws not be permitted to use any pedestrianised areas. As mentioned in the response from County Council Highways, there are traffic orders currently in place that do not permit cycles from using the pedestrianised areas and any change to the current rules would require these orders to be amended.
- 3.14** There is further concern that the use of pedestrianised areas by rickshaws might cause accidents and injury to pedestrians. For these reasons, it is not currently proposed that the arrangements with regards to cycles using the pedestrianised areas be changed.
- 3.15 Use of the cobbled area on Clarence Parade** – It is proposed in the draft policy that the cobbled area on Clarence Parade be allocated for use as a ranking space for licensed rickshaws. Two of the respondents however raised safety and congestion concerns over the use of that area and as a result the draft policy has been amended so to prohibit the use of that area for the purpose of ranking by rickshaws.
- 3.16 The classification of rickshaws as Hackney Carriages and the accompanying statutory implications** – Mrs Linda Camp of Rickshaw Revolution commented in her response to the draft policy that the proposals do not go far enough to distinguish a rickshaw from a traditional hackney carriage. Although it is accepted that licensing rickshaws as hackney carriages does not create an idea situation, it is the only one established in common law.
- 3.17** The draft policy and proposed Council approach seeks to apply discretion in so far as the legislation permits the Council to do so without compromising on safety and necessary control.
- 3.18 Advertising on rickshaws** – It is accepted that advertising is integral to the financial viability of operating a rickshaw business and as a result there could potentially be a high turn over of advertising on rickshaws.
- 3.19** To this end, it is proposed that the draft policy in relation to advertising on rickshaws be amended so that *implied consent* applies in relation to advertising but that the Council retain the right to seek the removal of any advertising on the licensed vehicles where it is construed to be inappropriate or offensive.
- 3.20 Proposed area of operation** – In their response, Rickshaw Revolution expressed concern that the proposed area operation is too restrictive. For the avoidance of doubt, the proposed area of operation only applies to rickshaws standing and/or plying for hire or in other words undertaking public hire work. The proposed area will not apply in all other circumstances for example where riders are being hailed, dropping passengers off, picking passengers up and/or operating on a private hire basis.
- 3.21** The reason why the proposed area of operation only applies to rickshaws undertaking public hire work is because that is the only aspect of their operation that is licensable and therefore controlled by the Council. Non-mechanically propelled rickshaws exclusively undertaking private hire work is not covered by the currently licensing legislation, by virtue of being non-mechanically propelled, and therefore not controlled by the Council.
- 3.22** It is necessary that the Council should be able to exert some measure of control over licensed vehicles through, for example, “spot” inspections and investigating complaints. Due to the geographic extent of the borough it is neither practical nor possible to exercise any measure of

control without delimiting a defined area of operation.

- 3.23** Furthermore, such a delimitation is not considered to be overly restrictive because it will only apply to public hire work and there will be a natural limitation of the area of operation relating to non-mechanically propelled rickshaws. For the reasons mentioned above, it is not proposed that the draft policy be amended to exclude the proposed area of operation. Again if Members were to approve a trial period, further consideration can be given to the need of such an area of operation should the licensing scheme be extended.
- 3.24** On the point of operation, Mrs Camp stated that rickshaws driving around streets would in essence be plying for hire.
- 3.25** The definition of what constitutes “plying for hire” is one developed in common law and somewhat complex in nature but sufficient to say, for the purpose of this report, that there should be some element of the vehicle being stationary in order for it to ply for hire. This is different from it being on the move and being hailed to pull over.
- 3.26** **Proposed fare structure** – Mrs Linda Camp of Rickshaw Revolution also expressed concern over the draft procedure relating to setting fares and questioned upon which basis the Council will set maximum fares for rickshaws.
- 3.27** Under section 65 of the Local Government (Miscellaneous Provisions) Act 1976, the Council has discretion to regulate fares chargeable by licence holders.
- 3.28** The Council has no previous history of licensing rickshaws and therefore no scientific basis on which to determine a maximum fare for rickshaws other than to replicate the levels set by other Council which may not be appropriate for Cheltenham.
- 3.29** Although it does so for normal licensed vehicles, the nature and operation of rickshaws are significantly different. The maximum fares applicable to motor vehicles are based in an approved formula that accounts for the running costs of a vehicle of which most are applicable to rickshaws.
- 3.30** To this end and taking into account the consultee comments received, it is proposed that the Council exercise its discretion not to formally regulate fares for rickshaws. However, to enable to the Council to properly investigate and respond to complaints, it is proposed that the policy and conditions be amended to require operators to issue receipts to customers and retain copies for inspection.
- 3.31** Again the need to control fares in respect of rickshaws can be assessed throughout any trial period and the Council reserves the right to introduce an approved fare structure at any point if it proves necessary.
- 3.32** **Passenger Numbers** – PC Andy Cook raised a question of permitted passenger numbers. Should the scheme be approved, each licensed rickshaw will be issued with a licence plate which will stipulate the number of permitted passengers based on the application and determination. For the avoidance of doubt and in reference to the question raised by PC Cook, babies and children will individually count as one passenger.
- 3.33** **Gloucestershire Constabulary Recommendations** – Gloucestershire constabulary, whilst accepting that rickshaws are environmentally-friendly and appealing to visitors, nonetheless expressed serious safety concerns in relation to rickshaws and in particularly to collisions where these types of vehicles offer virtually no protection for passengers and riders. They made the following suggestions should the Council be minded to licence rickshaws;
- The working hours for licensed taxi divers is exempt from the Working Time Directive and therefore currently exempt from statutory control. As a result, the Council has no powers to

impose restrictions as proposed by the Constabulary.

- Officers are in agreement with this recommendation but further work is required to establish if the use of the Honeybourne Line is practical for use by rickshaws. For example, bollards situated on the cycle route will prevent them from using and accessing certain sections of the route.
- As identified, Council enforcement officers do not have delegated powers to penalise riders for transgressions of traffic orders restricting use of certain sections of the highway. It is not considered necessary at this stage to empower enforcement officers with such powers but further evaluation of the need for such powers can be undertaken at the end of any trial period if applicable.

3.34 The need to hold a DVLA Driver's Licence – As identified in the report and draft policy the Court of Appeal ruled that rickshaws, insofar as them standing and plying for hire, should be licensed as hackney carriages and therefore also be required to comply with the statutory requirements applicable to licensed hackney carriages.

3.35 One such statutory requirement is that all hackney carriage drivers must be in position of a full UK driver's licence for at least 12 month preceding the application. The legislation does not specify that the DVLA licence should apply to vehicles therefore a full motorcycle licence, for example, would also comply.

3.36 Further, possessing a DVLA licence has the added value of ensuring that the holders are fully aware of the Highway Code and safe use of the road. This is particularly helpful in light of the fact that there is no nationally recognised competency specifically aimed at rickshaws used for public hire.

3.37 An amended draft policy has been attached at **Appendix 6** for approval and recommendation by Cabinet.

4. Trial Period

4.1 As has previously been mentioned in this report, the licensing of rickshaws is new and untested in Cheltenham and for that reason it is not recommended that the licensing of these types of vehicles be approved indefinitely. Officers recommend that should Cabinet be minded to approve the licensing of rickshaws, that the approval be subject to a two year trial effective from the issue of the first such licence.

4.2 In recommending the two year period, Officers have taken into account that any operator would have invested a significant amount of money in launching such a business with rickshaws costing about £3000 each.

5. Reasons for recommendations

5.1 To give due consideration to the feedback from consultees and to decide whether Cabinet will support such a scheme based on the evidence and facts before it.

6. Alternative options considered

6.1 Members can resolve that introducing a licensing scheme for rickshaws in Cheltenham is not appropriate. Such a decision must be based on due consideration of the facts before Members including the Council's corporate objectives, the preservation of public safety through the licensing function, the perceived risks of such a licensing scheme but also the operator's right to legitimately operate such a business.

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Appendices	<ol style="list-style-type: none"> 1. Risk Assessment 2. Responses and Proposed Policy Changes 3. City of Westminster – Accident reports involving Rickshaws 4. Media Report relating to Edinburgh Rickshaws 5. Pedicab Safety Evaluation by TRL Limited (2004) 6. Amended Draft Policy
Background information	<ol style="list-style-type: none"> 1. Officer report and minutes – Cabinet 19th of June 2012-07-31 2. Cheltenham Borough Council's 2010 - 2015 Corporate Strategy 3. Service Records

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
	There exists the possibility that the licensing of rickshaws could adversely affect public safety for the reasons contained in this report.		25 Sept, 2012	4	3	12	Accept	Based on the feedback and supporting evidence, Members must make a judgement with regards to the likely adverse affect on public safety and base a decision to licence rickshaws accordingly. If adopted, close monitoring will have to be undertaken and if required, suspension of the scheme must be considered.	Ongoing		
	Rickshaws are not able to offer transport options for people with disabilities and a decision to licence these does adversely impact on equalities.		25 Sept, 2012	2	2	4	Accept	Monitoring and feedback.	Ongoing		
	Any adverse impact on public safety resulting from the licensing of rickshaws will adversely affect the Council's reputation.		25 Sept, 2012	2	4	8	Accept	If adopted, close monitoring will be required and if required, suspension of the scheme must be considered to mitigate further damage.	Ongoing		
	The licensing of rickshaws will require additional enforcement resources to properly control.		25 Sept, 2012	2	4	8	Accept	The impact on additional resources required will be monitored against the effectiveness of supply of these additional controls.	Ongoing		

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