

Overview & Scrutiny Committee

Wednesday, 23rd January, 2013
6.00 - 9.35 pm

Attendees	
Councillors:	Duncan Smith (Chair), Klara Sudbury (Vice-Chair), Nigel Britter, Barbara Driver, Rob Garnham (substitute), Colin Hay, Helena McCloskey, Ian Bickerton, Jo Teakle and Diane Hibbert
Also in attendance:	Andrew North, Councillor Jon Walklett, Councillor Steve Jordan, Louis Krog, Councillor Peter Jeffries, Gary Spencer, Councillor Andrew Chard, Councillor Tim Harman, Councillor Diggory Seacome, David Halkyard, Pat Pratley and Mike Redman

Minutes

1. APOLOGIES

Apologies were received from Councillor Andrew Wall and Councillor Rob Garnham was attending as his substitute. Councillor Penny Hall, as a signatory of the call-in request had also given her apologies that she could not be in attendance at the meeting.

2. DECLARATIONS OF INTEREST

Councillor Garnham declared a personal and prejudicial interest in agenda item 7 as the company he worked for was engaged in promoting land at one of the potential development sites in the JCS area and would leave the room for this item.

Councillor Driver declared a personal but non-prejudicial interest in agenda item 8 as she resided in the same area as the applicant Mr Meyer.

3. MINUTES OF THE LAST MEETING

The minutes of the last meeting of 10 January 2013 were approved as a correct record.

4. PUBLIC QUESTIONS, CALLS FOR ACTIONS AND PETITIONS

A number of public questions had been received and the questions and responses are set out below.

1.	Question from Helen Wells, Chairman of Save the Countryside to the Chair of O&S, Councillor Duncan Smith (asked by Alistair Cameron in her absence)
	As the public has not had access to your consultants' work on Joint Core Strategy housing figures, can you tell us whether, as NPPF clause 50 says, the <u>current</u> and future demographic trends were factored in? In other words, were the emerging local 2011 Census results given due importance, particularly in relation to average household sizes, and will the committee be reviewing the consultants' work when the remaining

	local Census results become available in February?
	Response from the Chair of O&S, Councillor Duncan Smith
	<p>The consultant's report was published alongside the O&S agenda and was available to the public at the same time as members of O&S committee.</p> <p>The consultants identify the need to ensure that the emerging census data and future relevant datasets are be taken into consideration in the JCS.</p>
2.	Question from Alice Ross, a member of Save the Countryside to the Chair of O&S, Councillor Duncan Smith (asked by Alistair Cameron in her absence)
	Can you confirm that the JCS Scenario A figure of 16 200 homes is contained <u>within</u> whatever total JCS housing figure your consultants have recommended and would it be sensible and desirable for these homes to form the first phase of JCS development as this would encourage continuing urban regeneration - and building of affordable homes where they are most needed - and allow a future assessment of whether or when urban sprawl into the Green Belt would become necessary?
	Response from the Chair of O&S
	<p>The consultants were not asked to recommend a total housing figure – that is outside the scope of their report.</p> <p>The JCS will include proposals for a phased release of sites that meet the needs of the local communities.</p>
3.	Question from Kit Braunholtz to the Chair of O&S, Councillor Duncan Smith
	Does the JCS O&S group take the view that we take, that the sensible figure for the required number of new houses that should be planned for at this time should be towards the bottom end of the forecast range, in a plan, monitor & review process taking into account that there is even greater uncertainty than usual about the likely economic future of this country (and of this region) in the coming twenty years? This uncertainty arises from the wide discrepancies between different forecasts by different forecasters, but many authoritative forecasters - including the Governor of the Bank of England - forecast a long period of continued depression or even recession. Indeed , even the "man in the street" must be very dubious about the optimistic forecasts from bodies such as the Local Enterprise Partnership, in view of what has happened - or rather NOT happened - in the Japanese economy in the last twenty five years, and more especially in view of what HAS happened more recently in Europe, notably in Greece, and in Eire and Spain following housing booms, not to mention the rapidly increasing competition from Asian countries - especially China - in our export markets.
	Response from the Chair of O&S
	The working group did not make any conclusions as to required numbers. It did however accept the consultants comments that the changing pattern of household formation and additional census data should be used to inform the assessment of housing requirements.

	<p>In a supplementary question Mr Braunholtz asked; In the light of the extremely uncertain future that I described in my written question, do you really consider it “prudent” for the JCS to set a goal for new dwellings in the period 2011-2031 at the upper end of the possible outcomes of housing need, thus implying that the JCS Councils consider the danger of possible under provision of dwellings is far greater than the danger of irreparable damage to their environment arising from setting too high a target? Do you not consider it would be possible to deal with housing underprovision, if indeed this turns out to become a likely outcome, by modifying the strategy at an appropriate time, and thus avoiding both dangers? Do you not think this would be a “sound” policy which could be justified by statistical evidence together with common sense to a Planning Inspector?</p> <p>Councillor Smith said he was in a difficult situation as Chair of O&S as he was not in a position to answer this question and he referred it to Councillor Tim Harman as chair of the working group. Councillor Harman said the task group would wait to see the outcome of further work on the JCS. The task group had been thorough in their work and he hoped that would reassure members of the public.</p>
4.	Question from Kit Braunholtz to the Chair of O&S, Councillor Duncan Smith
	<p>Does the JCS O&S group take into account the fact that the requirement for a "five year land bank" in each authority will depend on the total forecast for the twenty year period, and therefore a higher forecast will result in a larger requirement for the five-year land bank? Such an increased requirement would of course make it harder for local planning authorities to resist planning applications for development on sites which they might have preferred to remain undeveloped (such as the former "White Land" in Leckhampton).</p>
	Response from the Chair of O&S
	<p>The working group did not resolve anything in relation to this matter.</p> <p>In a supplementary question Mr Braunholtz asked; Are you aware that, whereas the graph shown in para 10.7 of the Cambridge report is alleged to show that 75% of the growth in number of households (2011-2031) is due to increase in population, the result of assuming a continued Average Household Size of 2.3 in the JCS area and a population increase of 44,000 as generally agreed would by itself require only $44000 / 2.3 = 19000$ extra dwellings, far less than 75% of 28,500?</p> <p>In response Councillor Smith said he wasn't aware of that and thanked the questioner for bringing it to his attention.</p>
5.	Question from Margaret White to the Chair of O&S, Councillor Duncan Smith
	<p>Does the JCS O&S group recommend - in view of the considerations above - that a cautious figure should be adopted in the first place for the number of extra houses to be planned for, and that this should be reviewed periodically (perhaps every five years) in view of what has actually happened? Phasing of proposed strategic developments would be difficult if the 5 year supply could not be demonstrated without strategic sites on open countryside forcing us into a planning by appeal in</p>

	the first part of the plan period.
	Response from the Chair of O&S
	<p>The working group did not recommend anything in relation to this matter.</p> <p>In a supplementary question, Ms White asked; Can I ask the Lib/Dem Council, whether in agreeing to the greater than 20% increase in housing growth in the JCS area, over the next 20 years, they believe they are adhering to the main points of the Lib/Dem Manifesto, against which they were elected, which states as major item no 1: To resist urban sprawl while securing new development, economic growth and jobs – and sufficient units of social housing for local people – targeted on ‘brownland’ sites within the existing urban area while continuing to protect significant urban green spaces.</p> <p>The present proposal immediately endanger the green belt and green spaces, creating an immediate free for all from developers.</p> <p>In response, Councillor Duncan Smith said that as a Conservative member he could not speak on behalf of the Lib Dems and said he would refer the question to the Leader and ask him to provide a written response to the questioner.</p>
6.	Question from Dr. Elizabeth Pimley to the Chair of O&S, Councillor Duncan Smith
	Does the JCS O&S group recognise that the "historic " trend in AHS in England in the census record - a decrease of about 0.2 per decade - which applied during the period 1961 to 1991 - had already dropped to a decrease of only 0.1 for the 1991 - 2001 decade BEFORE the recession that started in about 2008? And that therefore the flat-lining observed during the decade 2001 to 2011 of the AHS at 2.4 was not purely attributable to the recession but was at least partly due to changing patterns of household formation?
	Response from the Chair of O&S
	The working group was happy to support the conclusions of the consultants in relation of changing patterns of household formation and average household size.
7.	Question from Margaret White to the Chair of O&S, Councillor Duncan Smith
	Does the JCS O&S group take into account that there is now a strong demand for the Government to encourage and help older people living alone to live together in shared accommodation? This policy would, if implemented, lead to a reduction in under-occupation and therefore increasing availability for family housing using the existing housing stock (as well as helping to reduce loneliness in old age and reducing pressure on social services).
	Response from the Chair of O&S
	This was not discussed by the working group as changes to government policy were not within its remit.

5. MATTERS REFERRED TO COMMITTEE

A call-in request had been received and was dealt with under agenda item 8.

6. FEEDBACK FROM OTHER SCRUTINY MEETINGS ATTENDED

Councillor McCloskey updated the committee on a meeting of the Gloucestershire Police and Crime Panel she had attended on 14 January 2013. The purpose of the meeting was to endorse the appointment of the new Chief Constable, Suzette Davenport. At the end of a long and difficult meeting, Ms Davenport was duly endorsed, however the Panel expressed concerns over the process of the appointment itself for the following reasons:

- The extremely tight timescale between the interviews and Panel meeting had meant that the Panel had very little time to absorb the complex paperwork
- The Commissioner had announced the appointment of the new chief constable to the media prior to the Panel meeting
- The Panel had only learnt of the announcement and the IPCC investigation of Ms Davenport from the media.

She advised the panel made the following resolution:

“The Police and Crime Panel accept the recommendation of the Police and Crime Commissioner for the appointment of Suzette Davenport as Gloucestershire's Chief Constable, subject to her categorical assurances regarding the IPCC investigation. However, the Police and Crime Panel must record our serious concerns over the appointment process undertaken by the Commissioner's office. We believe that the issue of the IPCC investigation was not properly considered. Specifically, interview panel members did not have sufficient information to balance the candidate's performance against the risks to Gloucestershire Constabulary.”

She advised that the next meeting of the Panel was due to take place on 6 February 2013 when they would be asked to endorse the Commissioner's budget. The Commissioner has asked the public, businesses and other local organisations to comment on whether the precept should be increased.

Members expressed concern that the new Chief Constable was under investigation and asked how the panel would validate her reassurances to the panel that she would be found completely innocent. What powers would the panel or the Police and Crime Commissioner have under the terms of the contract if that was not the case as this could have considerable repercussions for Gloucestershire.

Councillor McCloskey pointed out that the panel had no decision-making powers but they could veto decisions. In this case it would be a decision for the Police and Crime Commissioner.

7. FINAL REPORT OF THE SCRUTINY TASK GROUP ON HOUSEHOLD FORMATION RATES

The chair reminded the committee that their remit was to receive the report of the scrutiny task group and ensure that the task group had completed the task set by Council and met their terms of reference. It was not within the remit of the committee to get into the detail of the contentious points but he would allow

time for members to ask questions. The consultant from the Cambridge Centre for Housing and Planning Research (CCHPR) was on the conference phone so would be able to listen to the debate and respond to any technical questions.

The chair invited Councillor Tim Harman, as the chair of the scrutiny task group - Joint Core Strategy and Liaison Working Group on household formation rates, to introduce their final report and recommendations.

In his introduction, Councillor Harman thanked the members, the two co-opted members from Gloucester City and Tewkesbury Borough Council and officers for their contribution to this review. He referred to the background to this review set out in section 2 of the task report and he stressed the importance of a local authority ensuring that housing requirement figures set out in their local plan are soundly rooted in a robust evidence base. The project brief set for the working group had challenging timescales but they had maximised the time available. They had considered a final report from the Cambridge Centre for Housing and Planning Research (CCHPR) on 14 January 2013 which had examined a whole range of issues including the important factors of changes with regard to young people and an ageing population and the economic climate. The working group concluded that there were no material errors in the way in which the DCLG household representative rates had been applied and they didn't find any significant reason for deviating from them hence their recommendations set out in 9.1. He considered the working group had produced a sound report and the recommendations would support the council in ensuring it had the sound evidence base that was needed. He informed members that Councillor Bickerton, as a member of the working group, had not supported their report and presented some alternative evidence on household size predictions which he wished to present to the committee.

Councillor Bickerton said he was happy with the work undertaken and it had provided lots of valid data but he did not consider that the work was complete. He referred to the graph on JCS District Average Household Size Compared to National Trend he had produced that had been circulated at the start of the meeting. At the task group meeting on 14 January he had presented an earlier version of this graph which had resulted in an action to verify some of the data used by CCHPR. Since then he had been in discussion with the Office of National Statistics and Neil McDonald from CCHPR had assisted him in correcting some of the earlier district figures he had used to produce the graph presented at the task group meeting. This had resulted in the revised figures in the graph he had circulated to the committee tonight. This supported his view that there was still more work to be done and he disagreed with the conclusions of the consultant regarding the impact of the ageing effect on household size. He wished this graph to go forward as a minority report to the task group report as permitted under the Council's constitution.

The chair referred to the additional paper which had been circulated at the start of the meeting from Neil McDonald which provided some notes on Councillor Bickerton's graph on household size presented at the task group meeting and highlighted some errors in the data used. With regard to the revised graph circulated at this meeting, Neil McDonald advised that Councillor Bickerton appeared to have used rounded figures which indicated that average household size in England and Wales had been flat between 1991 and 2011. If the unrounded figures were used, the average household size was closer to 2.45 in

1991 and 2.37 in 2011 which demonstrated a fall in household size of around 3.5%.

Councillor Teakle, as a member of the working group, thanked CCHPR for a clear and accessible report and she encouraged the public to read it. She was pleased to see the acknowledgement in 14.1 b of the conclusions that if there was no change in household size between 2011 and 2031 around a third fewer extra households will be formed in the JCS area. She asked if the consultant could explain the statement in 14.1 c. and why it was unlikely that household size would remain static.

In response, Neil McDonald advised that there were three key drivers of household size. These were the household formation rate – the tendency of groups to form households (currently younger people were tending to stay longer with their parents); the ageing effect (i.e. the tendency for the average household size to fall if the proportion of older people in the population grows, as older people tended to live in small households); and marital status (a relatively small factor). Over the next 20 years, there was likely to be a faster increase in the older population in the JCS area than in the last 10 years. This would cause the 'ageing effect' to be much stronger. As a consequence it seemed highly improbable that, even if there was no economic recovery, there would be a sufficiently strong continuation in the trend for single people not to form households to counter the ageing effect. For that to happen that trend would need to go further than observed so far (rather than moving back towards the previous trend). A continue fall in household size therefore seemed highly likely.

Councillor Teakle responded that even if there was an economic recovery, she considered there were a number of other factors which may keep young people at home and they would not suddenly move into the housing market. She also questioned why household size did not appear to have been affected by the ageing population in the last 10 years. She wished to highlight the recommendation in 9.1.2 of the task group report which recognised the need for a sensitivity analysis. The report also referred to phasing development. Whilst accepting the officer advice that the council needs to have a five-year plan to satisfy the planning inspectorate and encourage developers to provide the necessary investment for initial infrastructure, she stressed the importance of phasing development to match economic recovery.

Councillor Bickerton suggested that the 2011 Census data appeared to demonstrate that the over 65 population had decreased in the last 10 years and therefore this needed to be re-examined.

The chair advised the committee that they should not prolong the work of the task group but instead should bring any matters to the attention of the JCS project which they felt needed further consideration going forward. He referred members to the terms of reference set for the working group and asked the committee to consider whether they had been met. The chair of the working group concluded that they had effectively discharged their obligations in the time given and any other matters could be taken forward by the working group.

Resolved that

- 1. The minority report submitted by Councillor Bickerton be noted**
- 2. The recommendations of the task group be endorsed and their recommendations should be forwarded to the JCS joint member steering group together with the minority report.**

8. CALL-IN LICENSING OF RICKSHAWS IN CHELTENHAM

The committee was asked to consider a call-in request regarding a decision made at Cabinet on 11 December 2012 regarding the licensing of rickshaws. As this was the first call-in to come to this committee, the chair explained how he intended to run the procedures.

Councillor Garnham, as one of the four members who had signed the call-in request, was invited to put the case for the call-in. Councillor Garnham felt that the council should be encouraging people like Mr Meyer who wanted to set up small businesses in the town however this was not the reason for the call-in. The reason he gave was that the Cabinet decision to defer any decision to an unknown date in the future, was not fair to the applicant and he should be given a yes or no answer. There appeared to be examples in London and Hereford of both unlicensed and licenced rickshaws working effectively with no significant safety problems. He considered the decision was not proportionate, there had been insufficient consultation and no presumption in favour of openness for the reasons set out in the call-in request.

In response to a question from a member, the Democratic Services Manager, advised that the witness questions circulated with the agenda had been drawn up based on the reasons given for the call-in and in consultation with the chair. They had been circulated to lead members of this committee and the signatories of the call-in request for comment. As a result additional questions had been incorporated before circulating them to witnesses to assist them in their preparation for this meeting.

The chair invited the Cabinet Member Housing and Safety to respond to the questions circulated to him in advance of the meeting and suggested members may wish to ask additional questions. Before answering the questions, the Cabinet Member referred members to the background set out in section 1.3 of the Cabinet report of 11 December 2012. He also advised members that nothing that the Cabinet or officers had done would stop Mr Meyer operating rickshaws in Cheltenham on an unlicensed basis. The issue in question was purely a licensing one..

Does the Cabinet Member think it is an acceptable outcome to defer the decision to an unspecified date in the future?

In response, the Cabinet Member considered that it was acceptable and the decision was proportionate to the desired outcome. Licensing was concerned with public safety and the Cabinet had considered it from a public safety angle and concluded that safety considerations would not be satisfied by trying to shoehorn the operation of rickshaws into the existing safety regulations.

Can you explain the reasons for the delays in dealing with this matter?

The Cabinet Member noted that this committee had delayed the consideration of this call-in and similar sorts of delays happened in the Cabinet decision-making process. The first delay was due to changes to the council's Constitution in May 2012. Previously a draft licensing policy would have been considered by the Licensing Committee and then forwarded to Council for approval. The change in the Constitution required the draft policy to be considered by Cabinet in consultation with the Licensing Committee and then forwarded to Council by Cabinet for approval. Following the borough council elections there had been no Executive meetings in May and this together with the change in Cabinet Members and summer recess may have caused some delay. He emphasised that this was part of the nature of Cabinet reporting and reminded members that this issue had been the subject of three Cabinet reports over a period of time including a public consultation period. He personally had tried to speed up the process by shortening the consultation period with the agreement of all parties.

The City of Westminster has more rickshaws in operation than the whole of the rest of the UK. In total, during 2011, there were upwards of two million journeys and there were just 8 collisions involving rickshaws. No serious injuries resulted and no passengers were injured. Were you aware of that and if so given that experience why do you still have concerns about the safety of rickshaws if operated in Cheltenham?

The Cabinet Member advised that following the receipt of responses from the consultation regarding safety issues, he had done some personal research on safety issues and had been horrified by what he had discovered. In London, the Metropolitan police, had to resort to an ancient Act of Parliament to deal with the large volume of unlicensed rickshaws. As a result of this operation many of the operators had been stopped, fined or their vehicles impounded. They also found that many of the rickshaws in the town had been illegally adapted to run on car batteries. He also questioned the figure of only eight collisions involving rickshaws as this did not take into account accidents involving bicycles or pedestrians and therefore was not a true reflection of their safety.

The chair asked how the Cabinet Member had applied his research to the operation of rickshaws in Cheltenham? Was his main concern that there would be a significant number of accidents or that a large amount of police time may be spent in monitoring the safety of rickshaws?

The Cabinet Member considered that the differential in London was that the rickshaws were unlicensed and therefore were not being endorsed by the council as safe to carry passengers. In Edinburgh, rickshaws had been dealt with under street trading licences and in Edinburgh there had been two fatal accidents, one where someone had fallen out of a rickshaw and another where a female passenger had broken her neck when her scarf had got tangled in the rickshaw's wheels. It would be a huge piece of work to pin down the safety information from all the research across the country and therefore it came down to making a judgement call. He had also referred to the report by the Transport Research Laboratory (TRL) which had highlighted safety related issues relating to rickshaws. His decision was based on the fact that there was evidence of lots of accidents and problems regarding rickshaws. If the council were to license rickshaws the public perception would be that the council were endorsing their safety. In his view he was not in a position to reduce the safety risks associated with rickshaws sufficiently to give such an endorsement.

How may rickshaws had been requested in Mr Meyer's application and if the Cabinet Member had not asked this question how was he able to quantify the risk and make an informed decision?

The Cabinet Member advised that there had been no specified number in Mr Meyer's enquiry and subsequently he had received another two enquiries from other people. He advised that if the council were to license rickshaws under the Hackney Carriage regulations then they would not be able to restrict the numbers in any way and therefore the resulting number of rickshaws could grow exponentially.

Members questioned whether it would be preferable to go ahead and license rickshaws in some way rather than allow them to operate unlicensed way which research showed had been dangerous in London? Why hadn't the Cabinet Member looked at how rickshaws are being operated in Hereford where they appeared to be operating safely? Surely licensing rickshaws would give the council a degree of control over rickshaw operation which they would not have if they were forced to operated in an unlicensed way?

The Cabinet Member suggested that it was an easy assumption to make that any form of licensing was better than unlicensed operations. However in order to mitigate the safety risks, the policy for rickshaws would have to be very restrictive. The situation in Hereford was very different as they were not being operated as taxis. His understanding in this case was that the council was being asked to license rickshaws as a Hackney Carriage License. The licensing process was concerned with enhancing public safety. As the council was not in a position to enhance the safety of rickshaws, the decision had been taken to defer the decision until the necessary legislation was in place. Whatever was happening in other councils, the provision of a licensed rickshaw service in Cheltenham would provide the public with a choice of opting for a quality standard or going for an unlicensed provider.

(At this point Mr Meyer clarified that his request had been for a rickshaw license and he had not made any specific reference to a Hackney Carriage License)

Was it right that people trying to run a business should expect a response from the council in a reasonable time to allow them to plan their future operations particularly if the business was seasonal? Could the process have been speeded up by setting up a Cabinet Member working group to consider common practice and adopt the best practice available at this time? What steps did the Cabinet Member take to drive the process forward in a reasonable time scale?

In response the Cabinet Member referred to his previous response highlighting that there had been three reports and a consultation period. There had been a period of three months between the application and the first Cabinet report with an election in the middle of this period. He reminded members that licensing was a statutory process and a search making any changes was a long process. He would love to have been in a position to license rickshaws but he could not afford to put the council in a position which was open to legal challenge. Therefore it was right to defer any decision until the government had put the necessary legislation in place.

He added that capacity of officers was limited and resources were lean. The work plan for the licensing team was scheduled in advance and resources committed accordingly and the rickshaw issue had come from left field. Being a new Cabinet Member had not caused any delays and in fact he had made himself very available for attending meetings on this matter. The pace of moving it forward had been very much governed by the need to gather and carefully consider all the available information.

If the Cabinet had made a decision to adopt the policy could there have been a risk to the council, the public or the operator that the government could then change the legislation regarding safety standards. Could the decision be considered to be proportional based on this risk?

The Cabinet Member advised that after receiving the second report on this issue, Cabinet had decided that the existing policy could become unworkable if there was an attempt to change it to reduce the safety risks associated with rickshaws so in that sense the decision was proportional to the risk.

Paragraph 1.3 of the Cabinet report of the 11 December, appeared to suggest that in September the Cabinet had been ready to instruct officers to produce a draft policy. If the consultation had not thrown up a few safety issues would the Cabinet have proceeded to adopt a policy?

The Cabinet Member advised that he was not in a position to answer this hypothetical question.

Had the Cabinet Member experienced rickshaw travel as part of his research? Member commented that he had travelled in a rickshaw recently in India and felt perfectly safe despite the crowded traffic conditions?

The Cabinet Member said he had not travelled in a rickshaw.

Louis Krog , the Business Support and Licensing Team Leader

The chair invited Louis Krog to respond to questions notified by the committee and any additional ones members wish to ask.

The officer wished to clarify a few points at the start. Firstly the Hackney Carriage licensing legislation that applied in London was different to that applied in Cheltenham and other towns outside London. He explained that if there was a desire to operate licensed rickshaws in Cheltenham then the council must first formulate a policy for dealing with applications for licences. This contrasted with operating non-motorised rickshaws on a private hire basis where the council would have no control under the current legislation.

What professional advice did you give to Cabinet Members regarding the operation of rickshaws within other boroughs?

Initially he had referred members to the experiences in London and Edinburgh and subsequently further research in a lot of other towns. This initial desktop exercise had made it very clear to officers that there was no uniform approach to the operation of rickshaws. It was a complicated area to deal with but they

had looked at the existing policy and procedures regarding Hackney Carriage licensing and incorporated some changes which had resulted in the draft policy presented to Cabinet.

Did you refer the Cabinet to Hereford Council who appear to have been operating licensed rickshaws since 2006.

Officers did not ignore the experiences of Hereford regarding safety. Regarding the licensing of rickshaws, it would not have been a helpful comparison since the operation in Hereford consisted of rickshaws that made no charge and had no fixed route.

What advice did you give regarding safety?

He had provided some advice in the June report to Cabinet on safety standards. During the consultation, it became apparent that a lot of the feedback was concerned with safety issues and therefore the focus for the December Cabinet report was on safety matters.

The report from the TRL had provided further information on safety issues. The report had suggested that the basic safety of rickshaws could not be enhanced, for example it was not possible to fit guards. The report concluded that rickshaws were reasonably safe if operated in a reasonable way and regularly inspected.

Do you have any firm dates for when the decision on the “*outcome of the taxi and private hire licensing law reform review by the Law Commission*” - will actually be published? Is it likely to be 2013 or 2014 or even later?

In response he said that government were very aware of the need to update the ancient legislation in order to deal effectively with rickshaws. The Law Commission had indicated that they were fairly confident that the legislation would be in place by late 2014 or early 2015.

Why was Cheltenham not leading the way on this issue and what was plan B. if the legislation was further delayed?

That was not for officers to decide.

In June 2012 Cabinet approved for the purpose of consultation a draft policy in respect of the licensing of rickshaws in the borough. Were you happy with the safety requirements set out in that draft policy? In your professional capacity was it the best policy you could recommend which brought together best practice and would it have been workable?

The safety standards set out in the draft policy were fairly standard and based on those for two or three wheeled bicycles. In the absence of anything more specific for rickshaws this was the approach that most councils had adopted. The function of the policy was to provide a method for determining whether a subsequent application was lawful. The policy would stipulate what type of vehicle the council was prepared to licence. The current adopted policy for Hackney Carriages excludes rickshaws and therefore they could not be licensed under that policy.

He confirmed that in the absence of a policy the only option for rickshaw operators was to run them unlicensed. The council could not impose any requirements on unlicensed operators and would not be in a position to check whether they were adequately insured.

He advised members that a Court of Appeal had ruled that rickshaws could only be licensed as a Hackney carriage in so far as them standing or plying for public hire and anybody operating in such a way without a hackney carriage licence would be committing an offence?.

In the December Cabinet report were you recommending to Cabinet that they license rickshaws and adopt the draft policy?

It was for Cabinet to decide whether they wished to approve the licensing of rickshaws. If they chose to do so then officers were recommending the safety standards in the draft policy be adopted by Council.

Are other councils wrong to license rickshaws and are we in the Cheltenham making too big an issue of it?

In his professional opinion the current legislation was not able to deal effectively with rickshaws and all councils were struggling with this. The government had recognized the increasing numbers of rickshaws and therefore the need to make the legislation workable to accommodate this increase in numbers. The current law forces councils to make the existing legislation work in order to protect the public and support the operators. Some councils have chosen to operate under the existing legislation and some have opted to wait until new legislation is put in place.

Could we license rickshaws under street trading legislation?

In theory this would be possible, but the problem with the street trading licensing policy was that it did not promote safety issues and therefore would offer inadequate protection to the public. It was not intended for that purpose and would stretch the street trading legislation too far. Following the Court of Appeal ruling that rickshaws should be licensed as Hackney Carriages, he had not included this as an option for Cabinet to consider.

What negotiations did you have with the applicant to look at how rickshaws might operate in Cheltenham and therefore how best to move the issue forward? Did you consider a fixed route for rickshaws in Cheltenham as was operating in Hereford?

Officers had an initial conversation with the applicant in March and following that there were ongoing discussions and many e-mails were exchanged. He acknowledged that relationships with Mr Meyer had gone sour and the issue had been the subject of complaints which have been dealt with under the council's complaint procedure. Recently there had been a meeting with the Cabinet Member, the applicant and the licensing officer's line manager.

The initial draft policy did propose an area for the ranking up of rickshaws which could also be used for spot checks but this was not well received by the

potential operators and therefore had not been included in the subsequent policy presented to Cabinet.

When questioned, the officer said he had sympathy for the applicant regarding the delays but he assured members that there was no undue delay by officers in dealing with the application. Asked whether he advised the applicant in March that there was no chance of his licence being approved in time for the summer season, the officer said he did advise Mr Meyer in an e-mail that it was unlikely that it would be completed within three months.

Is it true that the responses to the consultation regarding safety mostly came from taxi drivers and no major safety issues were raised by the police or the Road Safety Unit at the County Council?

There had been about 10 to 12 respondents to the consultation who had raised issues of safety. The response from the police was to refer to the experiences of rickshaws operating in Westminster. There had also been a comprehensive response from rickshaw operators which had been taken into account and a number of changes were made to the draft policy as a result of their comments.

The call-in request suggests that one of the grounds for call-in was that the decision should only have been taken following taking the professional advice of officers. Did you give clear advice to the Cabinet member and was it your advice that councils should adopt a policy? Did you have a personal opinion?

The officer advised that he kept the Cabinet Member aware of developments at the time and he had had many discussions with Councillor Jeffries who had regularly come into the office to discuss the matter. Members needed to bear in mind that it was necessary to follow due process and it could be a lengthy procedure to get a report signed off. The officer referred to the recommendations in the report to Cabinet on 11 December 2012. He had given clear advice to Cabinet on the draft policy but it was for Cabinet to agree the principle of licensing rickshaws first. His role as an officer was to give professional advice and not a personal opinion?

Hereford Licensing Manager

The licensing manager from Hereford had been unable to attend the meeting tonight due to unfavourable weather conditions. She had submitted a written response to all the questions and members had the opportunity to read this during an earlier brief adjournment. Members agreed that it was a very good report and answered all their questions and wished to pass on their thanks to the officer concerned.

The applicant Mr James Meyer

The chair invited Mr James Meyer to address the committee regarding his experiences.

Mr Meyer informed the committee that this was his first experience of local government and he had found it a demotivating and upsetting experience. His reason for submitting an application for rickshaws was that he felt it would be a

good thing for Cheltenham. He did not see it as a serious moneymaking exercise, he simply wanted to cover his costs. He had experienced a great deal of obstructiveness, albeit that this may not have been intentional, and he was appalled that it had taken 10 months to reach a stage where the decision had been taken to defer the decision. In practical terms he considered his application had been turned down and it was misleading and frankly dishonest to say it had been deferred. Officers had advised that the Law Commission would be reporting in 2013/2014 but in his experience this was much more likely to be 2017/18.

He referred several times to the 10 month delay and he did not consider that the Cabinet Member or the licensing officer had justified this delay in their earlier responses to the committee.

Regarding his relationship with the licensing officer, he acknowledged that the officer had been very thorough and there had been numerous attempts for them to work together. He considered that any help that he tried to give to the licensing officer was put down and dismissed and he was given the impression that it was rather improper for the licensing officer to be talking to the applicant for any length of time. This had created an adversarial relationship.

The reason given for the deferral was that the Hackney Carriage licencing policy was inappropriate for rickshaws. He acknowledged it may not be ideal but other local authorities have managed to use it successfully and Hereford was a good example. There was an important difference between theoretical concerns and practical application. Westminster's experience demonstrated this with only eight minor accidents reported and no passengers injured. He understood there were theoretical safety concerns about rickshaws and the vehicles could be seen as flimsy but in practice it had proved a safe experience. He considered the safety concerns raised by the Cabinet Member were just a smokescreen for the delay and despite all the meetings there was no evidence which set out what and when particular safety concerns had been discussed and the outcome of those discussions.

When first making his application, he had allocated 4 months and thought this was not an unreasonable estimate. There was a lead time of three months for rickshaw supply and at that time he had been given every indication that it would be possible to secure a licence in that sort of time frame. He had now missed one summer season and with the further delay he would now miss the following season. His requirement was that he would be in a position to launch a licensed rickshaw operation by April/May this year and he considered it would be a safe service if sensibly licensed. At the time of its initial application he had one rickshaw and he had now purchased an additional three.

A member commented that he had not been comfortable with some of the language Mr Meyer had used and he had focused unduly on the delay in his response to committee. He asked Mr Meyer whether he was open to considering any restrictions? Mr Meyer responded that yes he was open to this and had wanted all along to discuss the matter with officers and find a way round any problems. He felt he had been kept at arm's length and this was inappropriate.

Another member asked Mr Meyer whether everyone agreed with him that rickshaws would be good Cheltenham. In response he said there were fairly few people who had not rather liked the idea and overall 90% were positive and many thought it would be fun.

The chair invited the Cabinet Member to respond to the evidence he had heard.

The Cabinet Member wished to emphasise that there had been lots of meetings and correspondence with Mr Meyer. In his personal dealings with the applicant, he had found him to be obstructive and unwilling to listen but there had been lots of opportunities for discussion.

The chair referred members to paragraph 14.13 in the council's Constitution which set out their options for dealing with the call-in now that they had considered all the facts and heard the evidence.

In the discussion that followed members questioned whether the decision not to adopt a policy should have been referred to Council in the same way that Council would have been requested to adopt the draft policy if it had been approved by Cabinet. They asked whether it would be possible for Council to demand that Cabinet formulate a policy on this issue for their approval.

The Chief Executive advised that the Cabinet decision was that they should not instigate a process for getting a policy drawn up and approved and this was not a decision that required Council approval. This was confirmed by a solicitor from One Legal who was present at the meeting. He advised that the function regulations set out in the council's Constitution determine what decisions can be taken by Cabinet and which by Council. In this case Council would approve a licencing policy recommended to it by Cabinet but there would be no requirement for a referral to Council if Cabinet decided to defer taking any decision. There would also be nothing to prevent a member raising a motion at Council on this matter.

After hearing the evidence, a member thought there were a number of issues which led him to conclude that a decision should be referred back to Cabinet. The delay had happened and that could not be changed however he was of the opinion that had there been more opportunities to negotiate with the applicant a solution may have been found.

Councillor Sudbury wished it noted that she didn't feel the grounds for the call-in had been properly considered and these should be discussed by the committee before agreeing their next action. The chair noted her concerns but wished the committee to continue to consider its options set out in 14.13.

Members concluded that the matter should be referred back to Cabinet to have a look at their decision to defer. The committee were not recommending that the Cabinet should adopt the draft policy but they were recommending that they should revisit the decision to defer and possibly whether a 'yes' or 'no' answer to the applicant would be preferable. This appeared to fall under option 14.13 (c).

They agreed that this committee should forward a report to Cabinet in February if possible regarding this call-in and this would be drafted by the chair in

consultation with the members of the committee. If Cabinet wish to then refer a policy to Council, this could be done in March and if a policy was agreed then the Licensing Committee would then be positioned to consider an application soon after.

Resolved that the matter would be referred back to Cabinet with a request that they review the decision to defer.

9. DATE OF NEXT MEETING

The next meeting of the committee would be held at 6 pm on Monday 18 February 2013.

Duncan Smith
Chairman