

Cheltenham Borough Council

Cabinet

16 April 2013

Call-in of Rickshaw Decision made at Cabinet meeting on 11 December 2012

Report of the Overview and Scrutiny Committee

Accountable member	Councillor Duncan Smith, Chair of Overview and Scrutiny Committee
Accountable officer	Andrew North – Chief Executive and the Lead Officer for the committee
Ward(s) affected	All
Key/Significant Decision	No
Executive summary	<p>A call-in request was received from Councillor Rob Garnham on 20 December 2012 relating to the decision made at Cabinet on 11 December 2012 regarding the licensing of rickshaws in Cheltenham (see Appendix 3 for minutes of the meeting). The request was received within the call-in period and approved by the Chief Executive as a valid call-in.</p> <p>The request (attached as Appendix 1) was considered by the Overview and Scrutiny Committee on 23 January 2013.</p> <p>The O&S committee considered the facts of the call-in together with the evidence presented to them. They had the opportunity to question in detail the Cabinet Member Housing and Safety and the Business Support and Licensing Team Leader who had provided professional officer advice to Cabinet on this issue. They also listened to the views of the applicant Mr James Meyer at the meeting and were able to put any questions to him.</p> <p>After some debate and after considering carefully their options under the Council's Constitution, the committee decided to refer the decision back to Cabinet asking them to reconsider it for the reasons set out in this report. The minutes of that meeting are attached as Appendix 2.</p>
Recommendations	<p>The Cabinet is recommended:</p> <ol style="list-style-type: none">1. Consider the conclusions of the Overview and Scrutiny committee set out in this report2. Reconsider the decision taken by Cabinet on 11 December 2012 to defer the decision.

Financial implications	<p>There are no financial implications arising from this report.</p> <p>Contact officer: Sarah Didcote</p> <p>sarah.didcote@cheltenham.gov.uk, 01242 264125</p>
Legal implications	<p>This matter has been referred back to Cabinet to reconsider the situation on whether or not to have a Policy on Rickshaws. The report rehearses the issues considered by Overview and Scrutiny Committee following the call in of the Cabinet decision to defer the matter at its meeting of the 11th December.</p> <p>Cabinet must consider the recommendations of Overview and Scrutiny and reconsider the original decision.</p> <p>The Council is responsible for the licensing of Hackney Carriages within the Borough of Cheltenham. 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.</p> <p>Rickshaws fall under the definition of Hackney Carriages. A person can therefore apply for a Hackney Carriage Licence in respect of a rickshaw even in the absence of a policy. The current hackney carriage policy does not deal with rickshaws and many of the requirements for Hackney Carriages would not be met if an application was received in respect of a rickshaw. The Council, could not however automatically dismiss an application and the Council would need to consider each application, through its Licensing Committee, on its own merits.</p> <p>There are no statutory or national guidelines or standards regarding the licensing of Rickshaws. If however the Council grants any Hackney Carriage Licences in respect of Rickshaws the Council can grant those licences subject to conditions (which can include condition standards for design, use and safety) that the Council feel are necessary and proportionate.</p> <p>The Policy will provide support for any decision on a specific application. Any lack of a Policy is unlikely to assist the Council. The adoption of a policy will not mean that an application will be granted. The Council will need to consider any application and determine whether the application should be granted. If an application is refused the applicant has a right of appeal to the Crown Court.</p> <p>Contact officer: Sarah Farooqi</p> <p>sarah.farooqi@teWKesbury.gov.uk, 01684 272693</p>
HR implications (including learning and organisational development)	<p>There are no direct HR implications detailed in this report.</p> <p>Contact officer: Julie McCarthy</p> <p>julie.mccarthy@cheltenham.gov.uk, 01242 264355</p>
Key risks	<p>Refer to Cabinet report 12 December 2012</p>

Corporate and community plan Implications	Refer to Cabinet report 11 December 2012
Environmental and climate change implications	Rickshaws offer an environmentally friendly alternative form of public transport.

1. Background

- 1.1 A call-in request was received from Councillor Rob Garnham on 20 December 2012 relating to the decision made at Cabinet on 11 December 2012 regarding the Licensing of Rickshaws in Cheltenham. The request (attached as Appendix 1) was received within the call in period and signed by Councillors Penny Hall, Diggory Seacome and Jacky Fletcher. The request was received by the Proper Officer, the Chief Executive, Andrew North in accordance with the procedures set out in Part 4D – Overview and Scrutiny Rules – Rule 14. The Proper Officer agreed that it was a valid call in request.
- 1.2 Under the rules of call-in, the request must be considered at a meeting of the O&S committee within 10 working days. As the meeting already scheduled for 10 January was within this period, it was added to the agenda for this meeting. At this meeting the O&S committee resolved to refer the call in to a later meeting of O&S when all the witnesses would be available.
- 1.3 Having considered the facts of the call-in and having received any representations from the member(s) who submitted the request and the decision maker, the options for O&S are set out in paragraphs 14.13 of the Rule 14 in the Constitution.
- 1.4 The request was considered by the Overview and Scrutiny Committee on 23 January 2013.
- 1.5 The O&S committee considered the facts of the call-in together with the evidence presented to them. They had the opportunity to question in detail the Cabinet Member Housing and Safety and the Business Support and Licensing Team Leader who had provided professional officer advice to Cabinet on this issue. They were also provided with written evidence on the operation of rickshaws in Hereford from the Licensing Manager at the council. They also listened to the views of the applicant Mr James Meyer at the meeting and were able to put any questions to him.
- 1.6 After some debate and after considering carefully their options under the Council's Constitution, the committee decided to refer the decision back to Cabinet asking them to reconsider it for the reasons set out in this report

2. Reasons for recommendations

- 2.1 The reasons for the call-in were set out in the call-in request which is attached as Appendix 1. The members requesting the call-in felt the decision had not been made in accordance with one or more of the Principles of Decision making as set out in Article 13 of the Constitution.
- 2.2 The O&S committee considered these carefully and their conclusions are set out in the following paragraphs.
- 2.3 **13.1 (b) the decision shall be proportionate to the desired outcome;**
 - 2.3.1 It was clear to the committee that the desired outcome for Mr Meyer was a definitive ruling on whether or not the council was prepared to license the use of rickshaws in Cheltenham.
 - 2.3.2 Furthermore in the interests of good governance and public policy, a decision should be made that is clear and unambiguous so as to guide officers, members and the public as to the council's policy and intention.
 - 2.3.3 The evidence presented suggested that the officer's advice provided clear policy positions that would support a decision to licence or not to licence rickshaws.
 - 2.3.4 The decision to defer left the Council with a current policy which was unsuitable for considering rickshaw license applications and the Cabinet Member made it clear that he felt Cabinet was not in a position to make a decision on whether or not the council should license rickshaws until the legislation was in place.
 - 2.3.5 The matter was furthermore complicated by the fact that any change to policy would have to be

approved by Council on the recommendation of Cabinet.

- 2.3.6** However the failure of the Cabinet to make their intent clear by taking a clear decision undermined their intent and created uncertainty as to the council's position.
- 2.3.7** The deferral was made pending the outcome of the review of licensing provisions by the Law Commission. Whilst these were scheduled to report in '2013/14' it was widely agreed that legislation would not be expected to be in place before 2017. The potential delay before the matter would be considered again was considered unacceptable by the committee and it was felt that a clear decision should be made quickly.
- 2.3.8** The committee concluded that the matter should be referred back to Cabinet. It was proposed that having reflected on the process, on the evidence provided to O&S and subsequent advice from officers, Cabinet should agree a clear recommendation in favour or against changing the current policy and refer the matter to full Council for endorsement.
- 2.4 13.1 (d) the decision should be taken following due consultation and on the taking of professional advice from Officers;**
- 2.4.1** From the evidence we heard it was clear that both the licensing officer and the Cabinet Member had looked at the experiences in other councils. They were aware of the difficulties in using the current legislation and how other councils had overcome these. Officers also made Cabinet aware of the safety issues.
- 2.4.2** From the evidence of the licensing officer, it was clear that in the report to Cabinet of 11 December, officers were recommending a draft policy which in their professional opinion could be used to support the licensing of rickshaws in the town. However officers told us that the decision as to whether the council wanted to licence rickshaws rested clearly with the Cabinet.
- 2.4.3** The Cabinet Member suggested that the key concern was the matter of public safety. However little evidence was provided that suggested Rickshaws were inherently unsafe or that the public would be at any more risk than when using other licensed vehicles in the town.
- 2.4.4** The Cabinet Member accepted that a business could provide a rickshaw service in Cheltenham without a licence. Furthermore he accepted members comments that a licensed service would be inherently safer than an unlicensed one.
- 2.4.5** Examples were given where accidents had happened but the focus on these isolated examples appeared to be given greater weight than the overwhelming evidence of safe practice across the country.
- 2.4.6** We conclude that the evidence surrounding the safety of rickshaws should be reconsidered. A reassessment should be made of the evidence and the arguments in favour and against licensing a service on the grounds of public safety to ensure that a disproportionate emphasis has not been given to one side or the other. If Cabinet were minded to defer the decision on the grounds of safety issues they need to support this with a clear and specific statement about exactly what these concerns relate to so that they can be addressed by potential applicants in any subsequent applications.
- 2.5 13.1 (f) there should be a presumption in favour of openness;**
- 2.5.1** The call-in request suggested that the whole process of arriving at a Cabinet decision had not been conducted in a transparent and open manner and the applicant had not been given satisfactory explanations for the delays.
- 2.5.2** In the interests of good governance, transparency and accountability, decision making should be clear and timely.
- 2.5.3** From the evidence of the applicant, it was clear that Mr Meyer felt very strongly that the matter should not have taken 10 months and required a call-in to scrutiny for him to get some clarity as to the council's intent.
- 2.5.4** It was clear that he was given to believe that resolution of this matter should take 3-4 months. The

evidence received by the committee suggested that there was a failure of the authority to act within an appropriate timescale and to clearly communicate with Mr Meyer and manage his expectations.

2.5.5 Much was made of the changes to Cabinet Members, the election cycle and the Cabinet timetable as valid reasons for the delay. This was not generally accepted. Council business and the interests of the public should not be undermined or compromised by the political cycle. The council officers should be able to progress matters and brief members in a timely manner that does not lead to unacceptable delays.

2.5.6 The Chief Executive should look at the process and consider where practice can be improved to ensure that members of the public are kept well informed and do not suffer unnecessary delays. Consideration should be given to the public's expectation that the council should act in a reasonable and timely manner when handling a service request, license/planning application or complaint.

2.6 13.1 (g) there should be clarity of aims and desired outcomes;

2.6.1 As we said in paragraph 2.3.1 there is still no clarity of aims or desired outcomes for the applicant or any other potential rickshaw businesses who may want to operate in Cheltenham.

2.6.2 This should be remedied by a clear decision being taken by Cabinet with referral to Council for approval.

2.7 13.1 (i) the options considered and the reasons for the decision shall be clearly set out

2.7.1 The call-in request claimed that the Cabinet decision on 11 December did not "clearly set out" when the final decision would be taken and it was left to some unspecified date. This was not compatible with good governance and the Council's responsibility to promote business and economic development in the town.

2.7.2 As noted above, there were concerns that the consideration of the options and evidence presented to Cabinet had not been properly balanced, was not clearly recorded and had not been effectively communicated to the public. Referral back to Cabinet should afford an opportunity for these concerns to be addressed.

2.7.3 The committee took evidence that there were economic benefits that could benefit the town and were encouraged that a local business was willing to come forward and invest in a new venture in Cheltenham.

2.7.4 However, whatever the final outcome of the referral back to Cabinet, members expressed concerns that the handling of this matter had sent out a negative message to the public and local business. The delays in the process and the lack of clarity around the decision making process had undermined the reputation of the council.

2.7.5 The council wants to be an advocate for local business and to promote an environment where it can be a proactive and supportive partner. Consideration should be given to internal processes and timescales to ensure that the Council's response to local businesses is clear and timely.

3. Alternative options considered

3.1 The O&S committee considered whether they could refer the matter to Council and request that Council insists that Cabinet bring forward a policy for licensing rickshaws. We were advised by an officer from One Legal that this was not an appropriate function for Council. However we also understood that a member could raise a motion at Council making the same request.

3.2 At this stage, we considered that the decision should be referred back to the decision maker, in this case Cabinet, as this was the option most likely to produce an outcome for the applicant in the shortest timescales. This would be accompanied by a request that Cabinet should reconsider the evidence and then either determine to retain the existing policy or to adopt the new policy proposed by the officer report. This decision should then be referred to Council for approval.

4. Consultation and feedback

4.1 A lengthy debate was held at the O&S committee and evidence heard from a variety of witnesses and this is all set out in the minutes of that meeting in Appendix 2 to this report.

5. Performance management –monitoring and review

5.1 Overview and Scrutiny Committee will review the outcome of consideration of this report by Cabinet. However committee does expect Cabinet to determine the matter quickly so that Council can approve its recommendation before the end of April.

Contact officer	Contact officer: Rosalind Reeves, Democratic Services Manager Rosalind.Reeves@cheltenham.gov.uk, 01242 77 4937
Appendices	<ol style="list-style-type: none">1. Call-in request2. Extract of the Minutes of O&S meeting 23 January 20133. Extract from the minutes of Cabinet 11 December 2012
Background information	<ol style="list-style-type: none">1. Report and the minutes of Cabinet 25 September 2012 and 11 December 2012

Call-in Licensing of Rickshaws in Cheltenham - Cabinet Decision made on 11th December 2012.

The reasons for the call-in of this decision are because the decision was not made in accordance with one or more of the Principles of Decision Making as set out in Article 13 of the Constitution namely:-

13.1 shall be made in accordance with the following principles:

(b) the decision shall be proportionate to the desired outcome;

The desired outcome is a ruling on whether or not CBC will license the use of rickshaws in Cheltenham. The decision has still not been made and has been deferred for an indefinite period. There is no known date when a decision will be made but it is left *“until the outcome of the taxi and private hire licensing law reform review by the Law Commission is published in 2013/14.”* Even if an “outcome” of the review is made there is no known timetable for when it may become law.

This is the second time Cabinet have made a decision that is not proportionate to the desired outcome. In September the Cabinet decided, “To defer the item to a future meeting of Cabinet”.

(d) the decision should be taken following due consultation and on the taking of professional advice from Officers;

Professional advice of Officers did not explain the context of the fact that 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.

There was insufficient reference to Hereford Council who have been operating licensed rickshaws since 2006. The explanation given of “the difficulty of drafting a new licence” (as mentioned at Cabinet) is clearly invalid given another council has already taken this step.

(f) there shall be a presumption in favour of openness;

The whole process of arriving at a Cabinet decision has not been conducted in a transparent and open manner. Firstly there was an inappropriate delay in actually bringing the item to committee in December. Secondly, no valid reasons have been given for the delay in coming to the decision made by Cabinet on either the 25th September nor the 11th December. It would appear that the “official” reason for the delay in September was that, *“The proposal had been delayed due to the local government elections in May 2012, the change in Cabinet member, the summer recess and constitutional changes.”* Delays in December are because of “ongoing safety concerns”.

(g) there shall be clarity of aims and desired outcomes;

As for (b) above.

(i) the options considered and the reasons for the decision shall be clearly set out.

When a final decision is to be taken is not “clearly set out” and left to some unspecified date. This is not compatible with good governance and the Council’s responsibility to promote business and economic development in the town. Also, as in (d) above, not all relevant options have been considered.

Cllr Rob Garnham

20.12.2012

This notice of call-in has been signed by the following four members (signatures on attached sheet).

**Councillor Rob Garnham, Councillor Penny Hall, Councillor Diggory Seacome
Councillor Jacky Fletcher**