

**CABINET-16 APRIL 2013****EXCERPT OF MINUTES OF OVERVIEW & SCRUTINY COMMITTEE-23/01/13****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 many 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.**