

Licensing Committee

Grand Jury Room, Town Hall
31 August 2011 at 6.00pm

The Licensing Committee deals with policy issues relating to licensing matters and applications and appeals concerning hackney carriage and private hire vehicles and drivers and other appeals.

Information for Members of the Public

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**COLCHESTER BOROUGH COUNCIL
LICENSING COMMITTEE
31 August 2011 at 6:00pm**

Members

Chairman : Councillor Barrie Cook.
Deputy Chairman : Councillor Nick Cope.
Councillors Mary Blandon, John Bouckley,
Christopher Garnett, Dave Harris, Pauline Hazell, Mike Hogg,
Margaret Kimberley, Michael Lilley, Colin Mudie and
Ann Quarrie.

Substitute Members :

Agenda - Part A
(open to the public including the media)

Members of the public may wish to note that Agenda items 1 to 5 are normally brief.

Pages

1. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched off or to silent;
- location of toilets;
- introduction of members of the meeting.

2. Substitutions

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

3. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

4. Have Your Say!

(a) The Chairman to invite members of the public to indicate if they

wish to speak or present a petition at this meeting – either on an item on the agenda or on a general matter not on this agenda. You should indicate your wish to speak at this point if your name has not been noted by Council staff.

(b) The Chairman to invite contributions from members of the public who wish to Have Your Say! on a general matter not on this agenda.

5. Declarations of Interest

The Chairman to invite Councillors to declare individually any personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

6. Minutes

1 - 2

To confirm as a correct record the minutes of the meeting held on 1 June 2011.

7. Passenger Assistance Training

3 - 7

See report by the Head of Environmental and Protective Services.

8. Request to increase waiting time charged by Hackney Carriage Vehicles.

8 - 11

See report by the Head of Environmental and Protective Services.

9. Exclusion of the public

In accordance with Section 100A(4) of the Local Government Act 1972 and in accordance with The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

LICENSING COMMITTEE

1 JUNE 2011

Present :- Councillor Barrie Cook (Chairman)
Councillors John Bouckley (Former Mayor) ,
Dave Harris, Pauline Hazell, Mike Hogg (Former
Mayor) , Margaret Kimberley and Michael Lilley

3. Minutes

RESOLVED that the minutes of the meetings held on 9 March, 5 April and 18 May 2011 were confirmed as correct records.

4. Licensing Policy for Sex Establishments//Consultation responses

The Committee considered a report by the Head of Environmental and Protective Services on the final draft Statement of Licensing Policy for Sex Establishments following the public consultation period. The Policy had been scrutinised by leading licensing Counsel, Mr P Kolvin and his suggestions included in the final draft Policy.

The Policy, which was appended to the report, set out the Council's proposed approach to regulating sex establishments and the procedures it would adopt in relation to applications for sex establishment licences. Mr Daines, Protective Services Manager, outlined the changes that had been made, the most significant of which was the removal of the statement that the Council would restrict the number of establishments in the borough to zero. Counsel had advised that setting such a limit would be unlawful and instead the Council should consider each application on its own merit. Limits, including setting a zero limit, could be considered for specific areas of the Borough but could not be used for the entire Borough. There was concern at the possible proliferation of sex establishments in the Queen Street/ St Botolph's Street Area and discussion concerning the role of the stress area in controlling the number of premises.

A number of minor revisions had been made to the policy to tidy it up and remove duplications. In considering the suggested revisions, members raised concerns regarding the notification of applications to potential interested parties. The legislation required that the Police to be notified and in addition the Policy stated that Ward Councillors would be notified however, other local groups/organisations in the vicinity, namely schools, would not be automatically be notified. The Committee's attention was drawn to sections 4 and 5 of the final draft policy which recommended that any applications made in the vicinity of establishments such as schools be refused. There was some debate on how to determine the suitability of applicants under the criteria given in Section 6 of the final draft Policy. Mr Daines responded that the Council would work in partnership with the Police and other local authorities in the event that they were operating premises elsewhere to judge the suitability of the applicant. It was also noted that the final draft policy also now mentions that the Policy will be updated as and when appropriate.

The Committee was notified that only one response had been received in relation to the public consultation and that this had simply thanked the Council for consulting with it.

RECOMMENDED TO COUNCIL that the final draft Statement of Licensing Policy for Sex Establishments be approved and that the Policy comes into force on 21 July 2011.



Licensing Committee

Item
7

31 August 2011

Report of	Head of Environmental & Protective Services	Author	Colin Daines
Title	Passenger Assistance Training		☎ 282596
Wards affected	Not applicable		

This report suggests an amendment to the condition requiring holders of licences for new hackney carriage disabled accessible vehicle to have completed a Passenger Assistance Training (PAT) Course and suggests extending this to include all other drivers of those vehicles

1. Decision(s) Required

- 1.1 To amend the wording of a previous Committee decision relating to the issue of new Hackney Carriage plates. The proposal in question is that condition (iii) (c) should read "all proprietors and drivers driving the 18 new plates, Hackney Carriage Plate numbers 114 onwards, should attend a PAT training course and that the pass certificate be lodged with the Licensing Authority for retention with their driver record".
- 1.2 The cost of attending the training course to be borne by the individual drivers concerned and completed within 3 months from 1 September 2011.
- 1.3 That, with effect 3 months from 1 September 2011, all new proprietors and drivers of the other 13 plates, which require the vehicle to be wheelchair accessible in perpetuity, should attend a PAT training course and that the pass certificate be lodged with the Licensing Authority for retention with their driver record.

2. Reasons for Decision(s)

- 2.1 To eliminate a potential loophole in the wording of a previous Committee decision which has recently come to light.

3. Alternative Options

- 3.1 An alternative is to take no action, which would allow the loophole to continue in conflict with the spirit of the Committee's original decision.
- 3.2 If desired, the period to be allowed for compliance could be amended.

4. Supporting Information

- 4.1 Following one of our regular Hackney Carriage "Unmet Demand" surveys, in July 2006 the Licensing Committee resolved to issue 18 new plates. Members decided that these

plates should be subject to a number of conditions. The minutes of the meeting and the full list of conditions are shown at Appendix 1.

- 4.2 Condition (iii) (c) states that applicants must “hold a certificate of awareness in the carriage and care of disabled/wheelchair bound persons”. As a result the licence holders of each of the 18 new plates have satisfactorily completed a PAT course.
- 4.3 It is normal practice for holders of vehicle licences for Hackney Carriages to rent their vehicle to other licensed drivers when they are not using it themselves. This can be a regular arrangement whereby the other driver may use it every night, for example, or occasional to cover periods of holidays or illness. By doing this, the availability of the Hackney Carriages to the travelling public is increased and levels of demand are unlikely to exceed supply.
- 4.4 However, there is anecdotal evidence to suggest that some drivers renting the new plates are refusing to carry wheelchair customers on the grounds that they do not know how the ramps work or how to secure a wheelchair properly. This effectively reduces the availability of disabled accessible taxis at certain times and is clearly not what the Committee had in mind when making their original decision. It is also a potential source of damage to the reputations of both the trade and the Licensing Authority.

5. Proposals

- 5.1 It is therefore proposed that the condition be amended to require that all proprietors and all drivers driving the 18 new plates (Hackney Carriage Plate numbers 114 onwards), should attend a PAT training course. They would then be required to lodge the pass certificate with the Licensing Authority for retention with their driver record. This condition would also apply in the event that the hackney carriage business is sold at a later date.
- 5.2 The cost of attending the training course, which is available locally as well as nationally, would be borne by the individual drivers concerned. In order to ensure that there are no problems of oversubscription to courses, it is suggested that they should be given a reasonable period of time to complete it. A period of 3 months from 1 September 2011 is suggested.
- 5.3 Prior to the introduction of the above-mentioned 18 new plates, the Council had also issued 13 plates which required the vehicle to be wheelchair accessible in perpetuity. There is no evidence to suggest there have been problems with the use of these vehicles but it is suggested that, to ensure consistency and fairness, with effect from 1 September, any new proprietors or drivers using these vehicles should also be required to attend a PAT training course within 3 months. They would then be required to lodge the pass certificate with the Licensing Authority for retention with their driver record in the same way as the other drivers.

6. Strategic Plan References

- 6.1 One of the priorities for action listed in the Council’s Strategic Plan for 2009-12 relates to “congestion busting”. The availability of a vibrant and healthy local hackney carriage and private hire industry is a significant step towards encouraging the reduction in car ownership that will be needed to achieve this aim.

- 6.2 “Addressing older people’s needs” and “healthy living” are two other priorities which are relevant. Many disabled persons are also elderly and their quality of life will be adversely impacted if they are unable to travel around.

7. Consultation

- 7.1 Consultation has been limited to the Colchester Hackney Carriage Association who have expressed their full support for this proposal.

8. Publicity Considerations

- 8.1 If the Committee decides to amend the condition as suggested, letters will be sent to all licence holders affected advising them of the decision and the timescale for compliance.

9. Financial Implications

- 9.1 There are no financial implications posed by this report other than the cost of attending the course to those drivers who are currently untrained,.

10. Equality, Diversity and Human Rights implications

- 10.1 The current situation clearly has implications for equality and the recommendations will help to resolve these.

11. Community Safety Implications

- 11.1 There are no significant or direct community safety implications associated with the content of this report.

12. Health and Safety Implications

- 12.1 There is currently a potential risk to health and safety posed by the possibility that an untrained driver may attempt to use the ramps available on the vehicle in a misguided attempt to be helpful to a disabled customer. This could obviously result in a serious accident.

13. Risk Management Implications

- 13.1 As explained in paragraph 4.4 above, the refusal of a clearly identified “disabled friendly” Hackney Carriage to transport a disabled passenger is potentially damaging to the reputations of both the trade and the Licensing Authority.

LICENSING COMMITTEE

6 July 2006

Present: - Councillor Crowe (Chairman)
Councillors Bouckley, Chuah, Cook, Garnett, Hogg, B.Oxford
and Tod

Substitute Members: - Councillor Ford for Councillor Harris
Councillor Lewis for Councillor Quarrie

8. Issue of 18 New Hackney Carriage Licences// Response to Consultation

The Committee considered a report by the Head of Planning, Protection and Licensing regarding the results of the consultation process on the issue of an additional 18 Hackney Carriage licences.

A survey undertaken by Halcrow, carried out on behalf of Colchester Borough Council, had identified that there was an unmet demand for the services of hackney carriage vehicles within the Borough and recommended that a further 18 Hackney Carriage plates should be issued in order to meet this demand. At its meeting on 1 March 2006, the Committee had determined to issue all 18 licences and had drawn up a list of conditions which had to be met in order to obtain a licence. Consultation on this decision had taken place with the relevant stakeholders. 159 consultation letters were sent out and of the 24 replies received, 11 dealt with the issue of the additional licences. All the letters were included within the appendices to the report.

The letters highlighted the insufficient taxi rank space available for existing drivers which they considered would be exacerbated by the grant of 18 additional licences. It was mentioned that since the unmet demand survey had been carried out business had declined and members had to work longer hours in an attempt to make ends meet. There was concern that by issuing additional licences there would be less work for all the trade. The need for additional ranking space was acknowledged by the Committee but it was not within the Council's grant. Representations had previously been made to Essex County Council in an attempt to secure more ranks but a response had not yet been received. The matter would be pursued with Essex County Council and it was hoped that by bringing the new licences in over a period of 24 months, there would be sufficient time to conclude the matter.

The Committee considered the safety implications of rear and side loading wheelchair accessible vehicles following representations made by Essex County Council and having regard to the guidance issued by ROSPA and RADAR.

Mr Fraser, Chairman of the Hackney Carriage Association, Mr Doyle and Mr Rhodes addressed the Committee pursuant to the provisions of the Meetings General Procedure Rules 5(1).

RESOLVED that-

- (i) All 18 Hackney Carriage Vehicle Licences be issued at the full cost of the licence incrementally over a 24 month period, commencing on 1 September 2006, and in accordance with the conditions set out in (ii) and (iii) below.
- (ii) A points system be used to allocate the additional licences.
- (iii) Applicants must have or comply with the following conditions-
 - a) Have held a hackney carriage/driver's licence for a period of at least 5 years, during which they must have been of good conduct and good character to the satisfaction of the Council.
 - b) Have passed a knowledge test of the area.
 - c) **Hold a certificate of awareness in the carriage and care of disabled/wheelchair-bound persons.**
 - d) Must not sell the business for a period of 5 years from first issue (except in circumstances where it was accepted by the Council that there was an exceptional or compelling need to do so).
 - e) Must not currently hold a hackney carriage vehicle licence.
 - f) Only one vehicle licence to be granted per successful applicant.
 - g) Must supply satisfactory evidence that they own the vehicle.
 - h) The vehicle licence granted remains a wheelchair accessible licence in perpetuity or until such time as the provisions of the Disability Discrimination Act comes into force.
 - i) The vehicle provided must be accessible to customers seated in either a manual or electric wheelchair.
 - j) The vehicle supplied may either 'rear load' or 'side load' wheelchair seated passengers.
 - k) The vehicle is capable of running on low emission fuel (to assist in the promotion of green and clean public transport).
 - l) Any assignment or transfer of the plate must be with the approval of the Licensing Authority.
- (iv) Essex County Council be informed of this Council's wish to see an increase, as a matter of urgency, in the provision of taxi ranks within the town centre and in key out of town locations.



Licensing Committee

Item

8

31 August 2011

Report of	Head of Environmental & Protective Services	Author	Colin Daines ☎ 282596
Title	Request to increase waiting time charged by Hackney Carriage Vehicles.		
Wards affected	All		

This report considers an application from the Colchester Hackney Carriage Association for an increase in the fare allowed to be charged for waiting time by Hackney Carriage Vehicles and makes a recommendation to the Licensing Committee to approve that application.

1. Decision(s) Required

- 1.1 To determine an application from the Colchester Hackney Carriage Association for an increase in the fare charged to the customers of Hackney Carriages for “waiting time” (as explained in paragraph 4.6 below) from £12 to £16 per hour, and to agree or refuse that application or make any amendment to it that the Licensing Committee may feel appropriate.

2. Reasons for Decision

- 2.1 An application has been received from the Colchester Hackney Carriage Association which seeks an increase for the amount that licence holders are allowed to charge their customers for “waiting time”. (See Appendix 1).
- 2.2 Unlike the private hire trade who will quote for a journey in advance and whose rates may vary widely from one operator to another, the charges made by all of the Hackney Carriages that are licensed by a specific local authority must be identical.
- 2.3 In reality, this general principle will obviously be affected by factors such as the time of day, route taken, traffic delays etc but the meters fitted to all of the vehicles must be programmed to reflect the current charges in force.
- 2.4 In view of this need for consistency, the charges made, and any requests to change these must be formally approved by the Council. Colchester Borough Council can determine such applications and set such fares for hackney carriage vehicles licensed in their area as it may deem reasonable or necessary, by virtue of Section 65 (1) of the Local Government (Miscellaneous Provisions) Act 1976. (See Appendix 2).
- 2.5 The Committee periodically receives such requests for permission to increase fares and this report contains details of the latest application.

3. Alternative Options

3.1 Options available to the Committee are to either agree or refuse the application that has been made by the Hackney Carriage Association, or to make any amendment to the proposed increase that the Committee may feel appropriate.

4. Supporting Information

4.1 The fares charged by Hackney Carriages are made up of a combination of various elements. The various charges are calculated automatically by the meter on the vehicle to produce a total fare, but the cost of each element has to be pre-programmed into the unit.

4.2 One of the elements involved is the “waiting time”, which is an additional cost applied when the vehicle is delayed by heavy traffic. This can obviously be a significant issue at certain times of day and in certain locations.

4.3 The Colchester Hackney Carriage Association is a trade organisation whose membership is made up of approximately 109 drivers and proprietors and whose numbers make up the overwhelming majority of the Hackney Carriage drivers and proprietors that are licensed by Colchester Borough Council.

4.4 A Committee has been elected from amongst that membership to represent the views and opinions of the majority of the hackney carriage trade. The Association Chairman and another member of that committee should be present at your meeting to explain their request to members.

4.5 The Colchester Hackney Carriage Association Committee has balloted its members on two options which would increase fares, although not by way of a straight forward fare increase which the Hackney Carriage Association in its papers indicates would not be possible in the current economic climate. The ballot paper is shown at Appendix 3.

4.6 The first question related to the charge for waiting time. The ballot stated that “most drivers seem to think that Rate 2 is a fair price but an increase in the waiting time (by an amount to be voted upon) would boost Rate 1 when traffic is heaviest”. The options considered were an increase to £15 or £16 per hour, from the current level of £12, and £16 was the preferred option. Appendix 4 shows the outcome of the ballot.

4.7 The second question related to changes in the increments that the meter advances in and the initial “Flag Fall” rate. It was felt that this may simplify fares and change required and would result in some fares increasing slightly whilst others would decrease. However, there was no majority in favour of this proposed increase and it has therefore not been put included in the Association’s application.

5. Proposals

5.1 As explained in paragraph 3.1 above, the Committee has a range of alternatives available to it in respect of this request from the Colchester Hackney Carriage Association.

5.2 However, it is considered that the Hackney Carriage trade itself is in the best position to know its own business and running costs, what their customer market can bear in terms of fare increases and indeed whether or not their customers will be willing to pay for such an increase.

5.3 There is also significant competition in the Borough for the Hackney Carriage trade in the form of the Private Hire industry. Those customers who may feel that they do not wish to

pay an increase in Hackney Carriage fares could decide to use private hire vehicles as an alternative or preferred form of transport. However, although unregulated, the cost of using private hire vehicles could also increase as a result of rising operating costs.

- 5.4 Customers would lose the greater flexibility of being able to hail and hire a Hackney Carriage (taxi) straight off the street and would have to pre-book their journey by private hire vehicle, primarily by phone, on every occasion.

6. Strategic Plan References

- 6.1 One of the priorities for action listed in the Council's Strategic Plan for 2009-12 relates to "congestion busting". The availability of a vibrant and healthy local hackney carriage and private hire industry is a significant step towards encouraging the reduction in car ownership that will be needed to achieve this aim.

7. Consultation

- 7.1 The Hackney Carriage Association has carried out a ballot of its members regarding the proposal contained in this report and their application reflects the majority view of those members.

8. Publicity Considerations

- 8.1 Any decision taken by the Licensing Committee to increase or vary the maximum fare/tariff that can be charged by hackney carriage vehicles licensed by Colchester Borough Council must be advertised in a local newspaper that circulates within the Borough and in accordance with Section 65(2)(a) and (b) of the Local Government (Miscellaneous Provisions) Act 1976.
- 8.2 Details of any changes would also be publicised on the Council's web-site.

9. Financial Implications

- 9.1 If the Colchester Hackney Carriage Association's request is agreed by the Licensing Committee, then the maximum table of fares proposed would have to be advertised in a local newspaper, giving an implementation date for the increase of not less than 14 days from the date of publication of the notice.
- 9.2 If any written objections to the proposed increase are received by the Council within the 14 day objection period, these objections would have to be heard and considered by the Licensing Committee at a further meeting to be held not later than 2 months after the date that the maximum fare table/tariff was scheduled to come into force.
- 9.3 The Committee could then decide to allow the objection and alter the proposed increase accordingly, or dismiss the objection and allow the increase to stand. In this case, the increase must come into force not later than two months after the first specified date that was advertised in the newspaper.
- 9.4 The cost of advertising and in dealing with any other matters that might arise from the proposed increase, including the cost of printing and laminating new maximum fare charts, can be found from the existing licensing budget. There should be no other costs relating to this matter.

- 9.5 Any decision that the Licensing Committee takes in regard to this application can be challenged by way of an appeal to the Magistrates and Crown Court, or by way of a challenge seeking a judicial review of that decision.
- 9.6 If such an appeal to the Magistrates and Crown Court were successful, or a challenge by way of judicial review was successful, the costs of such an appeal or such a review could be awarded against the Council.

10. Equality, Diversity and Human Rights Implications

- 10.1 A licence and therefore by definition in this circumstance, the livelihood that goes in tandem with that licence, is to be regarded as the property of the licence holder. However their right to the use of that property must also be balanced against any other public interests that may apply in this matter.
- 10.2 Hackney carriages provide a significant part of the local public transport provision with access for disabled persons.

11. Community Safety Implications

- 11.1 There are no significant or direct community safety implications associated with the application that has been made by the Colchester Hackney Carriage Association.

12. Health and Safety Implications

- 12.1 There are no significant or direct health and safety implications associated with the application that has been made by the Colchester Hackney Carriage Association.

13. Risk Management Implications

- 13.1 There are no significant or direct risk management implications associated with the application other than those that are indicated as financial implications as outlined in paragraphs 9.5 and 9.6 of this report.

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