

## **REPORT TO LICENSING COMMITTEE**

**Date of Meeting: 22 July 2014**

**Report of: Assistant Director Environment**

**Title: Policy Tool of Restricting the Number of Taxi Licences**

**Is this a Key Decision?**

No

**Is this an Executive or Council Function?**

Licensing is a Council function delegated to the Licensing Committee.

### **1. What is the report about?**

This report reviews the justification for the continuation of the policy of quantity restriction of taxis in Exeter in terms of the benefit to the public, and proposes options for consideration.

### **2. Recommendations:**

**That Licensing Committee determine one of the following options, either:**

2.1 To maintain the current policy of taxi restriction, and agree the commissioning of a survey report to:

- a. ascertain the level of any unmet demand for taxis;
- b. determine whether any unmet demand is significant;
- c. determine what would be an optimum quantity level to robustly meet that unmet demand over the next 3 years; and
- d. quantify the public benefit and dis-benefit deriving from the operation of a policy of quantity restriction at that optimum level

**or**

2.2 To enter into consultation with the public, trade and other stakeholders with a view to removing the policy of taxi restriction in a managed way, and enhancing the quality controls for taxis to improve standards further and prevent any potential negative impact from de-restriction.

### **3. Reasons for the recommendation:**

Section 16 of the Road Transport Act 1985 precludes a Local Authority from refusing an application for a hackney carriage licence in order to limit the number of licences unless the authority is satisfied that there is no significant unmet demand. If the authority is so satisfied, it has the discretion to refuse a licence. If it is not satisfied, it is under an obligation to grant a licence.

The Council's defence of its policy of restricting taxi numbers relies upon its ability to demonstrate that there is no significant demand for taxis that is unmet; to demonstrate this it requires an appropriate survey affirming such, which is no older than 3 years old. The results of the last survey (a top-up survey) affirming such was reported to this committee in September 2011, and therefore with the passage of time, the committee's decisions in respect of taxi licence plate applications are more open to successful challenge.

The recent Law Commission Report published in May 2014 (and subject to another report to this committee today), has not recommended the removal of a council's ability to operate a policy of restriction, but it has recommended that any such policy should be subject to a statutory public interest test (this would accompany a presumption in favour of granting taxi licences unless a council is able to show that this is against the public interest). Furthermore,

a decision to restrict taxi numbers should be reviewed at least every 3 years, and be subject to local consultation. In effect, the public interest test would replace the survey of taxi demand. This is not law at the moment but is in line with the concerns and recommendations about taxi restriction expressed by the Office of Fair Trading and Department of Transport. A review of quantity restrictions for taxis is contained in Appendix 1.

A pragmatic alternative to maintaining a policy of restriction, (which still remains open to challenge despite an affirmative survey of demand), is to remove the policy and at the same time enhance quality controls (see Appendix 1, Section 13).

#### **4. What are the resource implications including non-financial resources.**

The resource implications of the recommendations are as follows.

Commissioning a survey as outlined in option 2.1 above will involve officer time (met within current resources) in preparing and procuring a consultant, together with a cost of approximately £27,000 for a comprehensive survey and £8,000 for an additional interim top-up survey – this will be funded from the licensing regime. There may be an impact on the medium and long-term funding of taxi marshals in meeting the costs of the surveys.

Consulting on removing the policy of restriction and enhancing quality controls in option 2.2 above, will involve officer time (met within current resources).

#### **5. Section 151 Officer comments:**

Vehicle Licensing is a self contained budget, with any surplus or deficit carried to an earmarked reserve to be used only for vehicle licensing purposes; there are sufficient funds within the reserve to fund the survey if required. Alternatively, should the need for the survey be removed, then this reserve could either be redirected to support improved compliance with quality conditions through increased inspections and subsidising the cost of compliance, or used to reduce licence fees in the short to medium term.

#### **6. What are the legal aspects?**

Exeter's last survey into demand was carried out in March 2010, with an interim top-up survey in March 2011, and reported to Licensing Committee in September that year.

The Council is now vulnerable to challenge by way of appeal to the Crown Court against a refusal to grant a licence since the survey is elderly.

Defending a challenge in the Crown Court to a decision to refuse an application is costly, with the courts finding against the Council in the last two cases; there is an indication that the courts do not always hold a sympathetic view on the Council's policy of restriction.

#### **7. Monitoring Officer's comments:**

The Council is obliged to grant any application for a hackney carriage licences unless it can show there is significant unmet demand in its area.

Given that the demand survey is elderly, the Council is unlikely to be able to successfully defend an appeal against a refusal to issue a hackney carriage licence based on the current survey. Clearly this puts the council at risk both reputationally and financially. Given that, Members need now to decide whether to commission a new survey into unmet demand and public benefit, or consider whether the Council should move to consult on whether to de-restrict the number of licences issued.

## **8. Report details:**

The policy of taxi restriction is reviewed in Appendix 1. In England and Wales, outside London, taxis (hackney carriages) are licensed by district councils under the Town Police Clauses Act 1847 as amended. The purpose of local authority licensing of the taxi and Private Hire Vehicle (PHV) trades is fundamentally to protect the public. Licensing authorities also have the power to limit the number of taxis they licence in their area, for reasons of managing the supply.

The grant of a taxi licence may be refused, for the purpose of limiting the number of taxis if, but only if, the local licensing authority is satisfied that there is no significant demand for the services of taxis (within the area to which the licence would apply) which is unmet.

Most local licensing authorities do not impose quantity restrictions; the Department of Transport regards that as best practice. Currently 86 out of 343 (25.5%) maintain quantity controls. Both the Department of Transport and Office of Fair Trading are critical of taxi restriction, and feel that it strikes against the benefit of the travelling public.

In order to satisfy itself that there is no significant demand that is unmet, a licensing authority needs to commission a survey of unmet demand, at least every 3 years as a general rule; Exeter's last survey was carried out in March 2010, with an interim top-up survey in March 2011, and reported to Licensing Committee in September that year; therefore the Council is increasingly vulnerable to challenge with regard to any reliance on this last survey to demonstrate that there is no significant unmet demand.

Since 1987, when the Council's limit was set at 38 taxis, there has been an average growth of taxi plates of around 1 per year, to the current 66 plates now. This growth has resulted from successful challenges made by applicants to the courts, and by the Licensing Committee determining an exception to policy. This illustrates that the policy tool of restriction is not particularly effective at limiting numbers.

From a systems thinking approach (Appendix 1, Section 12), there is a great deal of failure demand and wasted work associated with dealing with and hearing applications for taxi plates, their refusal, and defending challenges. There is also a financial cost to defending cases and in commissioning surveys of unmet demand.

The May 2014 Law Commission report on 'Taxi and Private Hire Services', recommended that the justification for a policy of restriction should not rest on demonstrating no significant unmet demand, but instead should rest on a test of public benefit. The conclusions of the accompanying review in Appendix 1 find that it is difficult to point to any tangible public benefit brought about by the policy of restriction – fares are amongst the highest in the country, standards are generally below that of the private hire vehicle (PHV) fleet, and there are specific times when supply does not satisfy demand (e.g. at city centre taxi ranks, late at night). This calls the sustainability of any policy of restriction into question.

The key concerns expressed about de-restriction revolve around opening the floodgates to applications, being swamped by taxis, destabilising the taxi fleet provision, and causing a drop in standards. These are justifiable concerns if appropriate counter-balances are not in place, but experience elsewhere has demonstrated that these concerns can be adequately addressed when appropriate quality controls are applied.

Recent examples of de-restriction (e.g. Bristol, Cardiff, Cambridge and Sheffield) have seen only very small increases in the overall taxi and PHV combined fleet, with a re-balancing between taxis and PHV's taking place (Appendix 1, Section 7).

Higher quality controls have acted as a proxy restriction elsewhere (e.g. London and Ipswich), but can act to visibly enhance the quality of the taxi fleet, e.g. by introducing requirements for a distinctive colour scheme and livery, wheelchair accessibility, low emission vehicles, and in-cab CCTV. They can act as a more pragmatic, beneficial and sustainable alternative to restriction (Appendix 1, Section 13).

**9. How does the decision contribute to the Council's Corporate Plan?**

The taxi and PHV fleet form an important transportation service within the city. Decisions in this report contribute to keeping my city safe and looking good, running a successful business and providing great things for me to see, do and visit.

**10. What risks are there and how can they be reduced?**

There is a risk in maintaining a policy of taxi restriction, in that it will become increasingly difficult to justify and defend; this poses a risk of incurring significant costs in defending appeals to decisions to refuse the granting of taxi plates. This risk can be removed by introducing higher quality controls to replace the policy of restriction.

**11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?**

There are two options recommended, the first one maintains the status quo, and there are no specific impacts on equality groups, however, it can be argued that taxi restriction can have an impact of community safety in terms of encouraging the need to use unlicensed taxis.

In terms of removing taxi restriction and replacing it with higher quality conditions in a managed way, there could be a positive impact in increasing the number of wheelchair accessible taxis. However, amongst existing taxi plate owners, there are a disproportionate number from the BME community, who may see the value of their plate premium be reduced (Appendix 1, Section 4). Otherwise there are beneficial gains to be made in terms of community safety and air quality, with higher quality conditions.

**12. Are there any other options?**

Another option would be to adopt a policy of managed growth in taxi numbers, incrementally increasing numbers year by year, but this would still require an affirming survey to be commissioned, and would not by itself, achieve an increase in quality of the taxi fleet.

**Assistant Director Environment**

**Local Government (Access to Information) Act 1972 (as amended)**

**Background papers used in compiling this report:-**

- The regulation of licensed taxi and PHV services in the UK, Office of Fair Trading, November 2003
- Taxi and private hire vehicle licensing: best practice guidance, Department of Transport, March 2010,
- SN601 Transport: access for disabled people, 23 October 2012
- SN2005 Taxis and private hire vehicles, 29 May 2014
- SN2772 Taxis: quantity restrictions, 29 May 2014

- Law Commission Consultation Paper No 203
- Law Com No. 347 Taxi and Private Hire Services, May 2014

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