

**BRISTOL CITY COUNCIL
PUBLIC SAFETY AND PROTECTION COMMITTEE**

16th DECEMBER 2010

**HACKNEY CARRIAGE POLICY – REQUEST FROM THE HACKNEY
CARRIAGE TRADE FOR A SURVEY TO BE CONDUCTED TO
MEASURE THE DEMAND FOR HACKNEY CARRIAGES IN BRISTOL**

(Ward: Citywide)

Report of the Strategic Director, Neighbourhoods

Purpose of Report

1. To respond to an item of Public Forum raised by representatives from the Hackney Carriage trade requesting the Council to (i) undertake a survey to measure the demand for hackney carriages in Bristol and (ii) refuse applications for hackney carriage licences in order to control the number of hackney carriages able to operate in the City.

Background

2. On 12 November 2007 the Committee, having accepted the findings of a survey of demand, resolved:

**(ii) that the numerical control on the granting of
hackney carriage vehicle licenses be removed;**

3. Members may be aware that between December 2002 and November 2007 the council relied on section 16 of the Transport Act 1985 to control the numbers of licensed vehicles. That section provides that an application may only be refused for the purpose of limiting the number of hackney carriages in respect of which licenses are granted “if, but only if, the person authorised to grant the license is satisfied that there is no significant demand for the services of hackney carriages (within the area to which the license would apply) which is unmet. In other words the discretion to refuse for the purpose of controlling numbers only arises in certain circumstances. The policy of the legislature is to discourage numerical control as this extract from circular 3/85 makes plain:

”councils may wish to review their policy on the control of taxi numbers in the light of the section. Limitation of taxi numbers can have many undesirable effects – an insufficiency of taxis, either generally or at particular times or in particular places; insufficient competition between the providers of taxi services, to the detriment of their customers; and prices for the transfer of taxi licenses from one person to another which imply an artificial restriction of supply. Under the section a district council may refuse a license to restrict numbers only if, *satisfied* that there is not significant unmet demand for taxis in the relevant area. If there is an appeal it will be for the council to convince the court that they had reasonable grounds for being so satisfied. It will not in general be sufficient for a district council to rely upon the assertion of existing taxi license holders that the demand is already catered for. They have evidence only of the demand which they satisfy and it will be for the council themselves to seek for and examine the evidence of unmet demand. There may be those who have given up trying to use taxis because of the inadequacy of the service and there may be latent demand in parts of a district that have not been adequately served – where those who wish to use taxis may not have demonstrated their demand since there had been no opportunity of having it satisfied.Overcrowding at taxi ranks is not of itself evidence that there is no unmet demand. It may be that the provision of ranks has hitherto been limited and the council should look actively for sites for further ranks.....”

4. In November 2003 the Office of Fair Trading published a market study into the regulation of taxis and private hire vehicles in the United Kingdom. Among other things the study recommended that the limited discretion of Councils to control the numbers of hackney carriages standing or plying for hire should be brought to an end. That particular recommendation was not followed. The Government responded to the study on 18 March 2004 by way of a written statement in the House of Commons. Included in that statement was an action plan, part of which covered restrictions on the issuing of hackney carriage licences. The key paragraphs from the action plan are reproduced below.

*4 ‘The Government agrees that consumers should enjoy the benefits of competition in the taxi market and considers that it is detrimental to those seeking entry to a market if it is restricted. **The Government is therefore strongly encouraging all those local authorities who still***

maintain quantity restrictions to remove restrictions as soon as possible. Restrictions should only be retained if there is a strong justification that removal of the restrictions would lead to significant consumer detriment as a result of local conditions.

5. *However, the Government received a significant number of representations expressing the view that ultimately local authorities remain best placed to determine local transport needs and to make the decisions about them in the light of local circumstances. The Government believes that local authorities should be given the opportunity to assess their own needs, in the light of the OFT findings, rather than moving to a legislative solution.*

6. *Nevertheless the Government believes that local authorities should publish and justify their reasons for restricting the number of taxi licenses issued. The Government will therefore write shortly to each district/borough council or unitary authority maintaining quantity restrictions and ask them by 31st March 2005 the local case for such restrictions, and at least every three years thereafter, and make their conclusions available to the public.*

5. As Bristol was at that time operating numerical control it did receive the letter referred to in the last paragraph quoted above. Bristol responded that it intended to review the position, which of course it did, leading ultimately to the decision of November 2007 to discontinue that form of control and act in line with the Government's guidance.

6. Those presenting the public forum statement seek two things:
(i) the commissioning of a survey to assess whether there is any significant unmet demand;
(ii) Limitation of numbers to the level the survey authors advise will satisfy any significant demand that is not currently met

That is, support for the proposed survey is conditional on the findings of the survey being "wholly accepted by both the Council and the trade. If a survey recommends 5 additional plates, only 5 must be issued"

The Council is advised (see legal implications below) that this is not a proposal it can lawfully agree to.

The Council does not need the agreement of the trade to conduct a survey but as no reason has been identified for departure from the guidance and indeed the issue is not currently on the Committee's agenda there is no reason to incur the cost involved in such an exercise.

Legal Implications

The proposal summarized in the final paragraph of the public forum statement cannot lawfully be considered because:

- (a) It would effectively delegate the decision about whether and to what extent the Council should exercise any discretion it is judged to have to a third party (the author of the survey). This is ultra vires (beyond the Council's powers), the delegation of such decisions only being permitted to a committee, sub committee or officer of the Council;
- (b) It requires the council to agree in advance how any discretion should be exercised. Predetermination in such matters is straightforwardly unlawful.

The intention of the legislature in enacting section 16 of the Transport Act is plainly to limit the ability of Councils to control numbers and the policy is reflected in the circular quoted in the report. If the Council were considering a departure from the guidance then it should need to be clear about the reasons for doing so. In such circumstances the council would need to identify if its limited discretion to control numbers had arisen, i.e. whether there was any significant unmet demand for hackney carriages. One accepted method for this is the conduct of a survey; where this would be conducive to or would facilitate the function of determining applications then the council could commission this of its own volition; the consent of existing licensees would not be required. However given the issue is not even on the agenda no reasonable basis for incurring this expenditure is apparent. There is no need to conduct a survey in order to continue with the council's current practice under which refusals are motivated by purposes other than that of controlling numbers.

Pauline Powell

Senior Solicitor
(Licensing, Environmental and Regulatory)
For Head of Legal Services

Appendices

Appendix A

Item of Public Forum presented
on 24 August 2010

RECOMMENDED: Committee give their instructions

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background papers: Report to Public Safety and protection
 Committee – 12 November 2007, 8 April
 2008, 6 April 2010

Contact Officer: Nick Carter
 Enforcement and Regulatory Services
 Manager
 Neighbourhoods
 Telephone 9142511

PUBLIC FORUM STATEMENT TO PUBLIC SAFETY AND PROTECTION COMMITTEE 24 AUGUST 2010

Dear Members

Re: Managed Growth of Hackney Carriage Vehicle Licenses

During 1996/97, it was decided to lift the restriction on the number of hackney carriage vehicle licenses issued. By doing this, the fleet number was expanded threefold (approximately) in a little over four years with almost disastrous effect and this was clearly recognised by the City Council. Drivers were working excessively long hours which was neither safe nor fair and vehicle maintenance was cause of great concern therefore, following representation from the trade and the acknowledgement from the council that this situation could not be permitted to continue in such an uncontrolled manner, it was decided in 2002 by the council to reintroduce a cap on the number of hackney carriage vehicle licenses that it issued.

During the following years, the trade gradually re-stabilised and standards within the trade gradually rose to a more acceptable standard. Both the city council and the trade accepted that this totally uncontrolled growth through deregulation probably caused more problems than it solved.

In 2008 an independent survey was commissioned by B.C.C. but paid for by the trade, to review the need to increase to taxi fleet size. Although there were concerns raised over the findings of this survey and, against the advice of the police, it was decided to once again, remove the cap on the number of hackney carriage vehicle licenses issued. The survey found that there was "No significant Unmet Demand" however, using a formula set by the government to take into account "Latent Demand", the survey showed that there was a shortfall of 39 taxis. The Council had three choices, (1) retain the status quo with no increase in vehicle licenses, (2) increase the fleet by the recommended 39 licenses or (3) total delimitation. The council opted for total delimitation effectively ignoring the findings of the survey and disregarding police concerns.

Following the second delimiting of licenses issued as from May 2008, there has been a significant increase in fleet size (currently standing at an additional 85 licenses issued with a possible 20 further in the pipeline). This is causing a major detrimental impact on our city not to mention the severe financial impact on existing drivers and operators; many of whom are now fighting for their very survival.

Taxi ranks are grossly oversubscribed and clearly the police are far from happy with this situation. Temple Meads station is causing the railways management a real headache with taxis blocking roads, parking in the short-stay car park thereby depriving parking facilities to visitors and with taxis trying to find somewhere to stand around central Bristol, this often leads often taking up spaces allocated for buses. However and more importantly, the amount of addition pollution generated by taxis “cruising” must surely draw into question the City Council’s “Green Credentials”. We refer to Cllr. Ron Stone’s statement in 2008 on how important it is to reduce pollution in our city under the A.Q.M. (Air Quality Management) program.

The trade is now facing even more challenges. Airport bus services now take away almost all journeys previously performed by taxis by offering the cost of the bus journey as part of a train ticket price, an inclusive ticket. In addition, these airport buses now cover City Centre, Clifton, Hotwells, Bedminster and the student halls of residence. Although many journeys performed by these buses are simply not cost-effective, by receiving subsidies and financial support from the airport operators, we cannot compete.

Night buses now take much of the work away from taxis by offering cheaper fares at night than through the day. Again, heavily subsidised they create a huge impact on the night takings of our drivers. We have deep concerns regarding night bus services as lone females opt for a cheaper bus services then have to walk unaccompanied in the middle of the night, to their homes.

The H.U.B.S. bus service. Completely free to those who use it but instead of helping those who need to travel to the various hospitals, this service is used by people simply going to work, people who don’t even live in our city but using a bus service which is completely paid for by others.

In addition to the “legal” services provided by the various bus operators, there is the very serious issue of “illegal” services provided by Bristol licensed private hire vehicles and taxis licensed by neighbouring authorities who come into our city, ply for hire and steal the work from our drivers and which they are not entitled. This is a very major problem as currently the enforcement policy of this council surrounding the catching and prosecuting illegal plying for hire and touting is leaving a lot to be desired. Information obtained under the Freedom of Information Act highlights this problem as being far more serious than first thought. Since January 2008, the number of Bristol private hire drivers caught illegally plying for hire in this city stands at just 9, that’s less than four in any one year. The number of out of town taxi drivers caught in the same 2½ years for illegally plying for hire stands at NIL, not one single driver caught.

With the development around the Temple Meads area, many businesses have relocated to this area thereby avoiding the need for taxi transport as all these businesses are within easy walking distance.

The “Recession”. Although everyone has been affected in one way or another, taxis have been particularly hard hit. Regarded by many as a “luxury”, when money gets tight – luxuries are the first to suffer.

One of our main concerns surrounds racial tensions amongst the various communities within our trade. The “gentleman’s agreements” which operated successfully for many, many years has all but disappeared. Drivers are “racing” to get back which often means overtaking other drivers just to get there first. This often leads to arguments on ranks which often end up with groups supporting “their own”.

As members travel around the city, particularly during the evenings, the sheer number of taxis this city now has must be very apparent; our trade is grossly over-subscribed and clearly, the issuing of hackney carriage vehicle licenses in such an uncontrolled manner cannot continue. We accept that from time to time, there may be the need for additional taxis to join the fleet but this must be by way of controlled expansion or “Managed Growth” as we call it.

Whilst we appreciate the difficulty in finding the right balance of enough taxis to meet the needs whilst at the same time, retaining a working environment where driver can earn a decent living, we would like to offer the following proposal which we believe to be fair and satisfactory to both the city council and the trade.

A survey is the only way that the council can re-regulate the Bristol taxi trade without fear of a legal challenge. We accept this and we realise that such a survey costs up to £20,000 which due to government restraints, this council is no longer able to afford. We ask that, this committee commission such a survey without delay on the understanding that the trade will pay for it by way of an additional amount being added to the cost of the vehicle licenses over a three year period. Following a vote of the trade membership and a mandate secured, we are now able to offer our proposal with the full support of the trade. Furthermore, as the findings of any survey are only valid for three years, our proposal is ongoing.

It must be conditional however, that the findings of any survey must be wholly accepted by both the council and the trade. If a survey recommends 5 additional plates, only 5 must be issued.

We urge members to give serious consideration to our proposal

whereby managed growth is based on facts and not on opinions.