

Notice of Meeting

Licensing Committee

Tuesday, 13th December 2011 at 6.30 pm
in Council Chamber Council Offices
Market Street Newbury

Date of despatch of Agenda: Friday, 2 December 2011

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Jenny Legge / Jason Teal on (01635) 503043 / 519102

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Further information and Minutes are also available on the Council's website at www.westberks.gov.uk



To: Councillors Peter Argyle, Jeff Beck (Chairman), Paul Bryant, Billy Drummond, Adrian Edwards, Manohar Gopal, David Holtby, Tony Linden, Mollie Lock (Vice-Chairman), Geoff Mayes, Andrew Rowles, Ieuan Tuck, Quentin Webb and Laszlo Zverko

Agenda

Part I

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1. **Apologies**
To receive apologies for inability to attend the meeting (if any).
2. **Minutes** 1 - 4
To approve as a correct record the Minutes of the meeting of this Committee held on 29 June 2011.
3. **Declarations of Interest**
To receive any Declarations of Interest from Members.
4. **Transfer of Hackney Carriage Driver Licences** 5 - 38
Purpose: To advise Members of a request from the Taxi Trade Associations to review a decision taken on 26th April 2005 in respect of hackney carriage vehicle transfers

Andy Day
Head of Policy and Communication

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Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

LICENSING COMMITTEE

MINUTES OF THE MEETING HELD ON WEDNESDAY, 29 JUNE 2011

Councillors Present: Peter Argyle, Jeff Beck (Chairman), Manohar Gopal, Tony Linden, Geoff Mayes, Ieuan Tuck, Quentin Webb and Laszlo Zverko

Also Present: Paul Anstey (Environmental Health & Licensing Manager), Alison Beynon (Solicitor) and Brian Leahy (Senior Licensing Officer), Jessica Broom

Apologies for inability to attend the meeting: Councillor Paul Bryant, Councillor Adrian Edwards, Councillor David Holtby, Councillor Mollie Lock and Councillor Andrew Rowles

Councillor(s) Absent: Councillor Billy Drummond

PART I

4. Minutes

The Minutes of the meeting held on 15th March and 17th May 2011 were approved as a true and correct record and signed by the Chairman.

5. Declarations of Interest

There were no declarations of interest received.

6. Hackney Carriage Licensing

Brian Leahy introduced the report (Agenda Item 4) on the recommendations regarding the outcome of the demand survey that was undertaken following a request from the Taxi Trade to cap numbers of taxi licenses in West Berkshire. Section 16 of the Transport Act recommended that a survey be carried out approximately every 3 years in order that the Council had good evidence upon which to make its decisions. The paper that Brian Leahy had presented to the Committee was based on the independent demand survey – which was a lengthy report – the recommendations of which were included as Appendix A. The survey had indicated that there was no unmet demand in West Berkshire, however it should be noted that the government provided guidance that if market forces prevailed, then councils should not enforce a cap on numbers.

Brian Leahy had set out the options that Members were advised to consider in the report and added that the Committee could set a cap at higher level than the limit of 200 that had previously been put forward. At the time of submitting the report, the number of vehicle licenses had been 189. There were now 191 licenses with 6 awaiting processing which would take the total to 197 – 3 below the suggested limit.

In response to a question from Councillor Quentin Webb, Brian Leahy confirmed that the capping was being considered for vehicle licences not drivers. A business could have 10 cars and employ 15 drivers – there were far more drivers than there were vehicle licenses and the Council could not cap driver licences.

Councillor Jeff Beck stated for the record, that Members of the Committee had been lobbied by way of an email from Matt Castle of Dolphin Taxis with 2 attachments. However, this could not be taken into consideration at the meeting, as it was not

LICENSING COMMITTEE - 29 JUNE 2011 - MINUTES

submitted within the required timeframe. Several members of the Committee had not yet seen the email.

In response to questioning from Councillors Linden, Zverko, Argyle and Webb, Brian Leahy made the following points:

- 2 of the 6 Berkshire Authorities had or were considering capping taxi numbers, however the choice was independent to an area;
- The number of licences fluctuates, but 191 was the maximum number of licences he had witnessed in 15 years. This was around 14 more than ten years ago;
- The Department for Transport (DfT) recommended that a survey be undertaken every 3 years if capping was adopted. In 3 years time the situation could be re-evaluated and capping be removed or reconfirmed, but firm independent evidence would be required;
- Taxis could operate anywhere in the District despite being licensed in a certain area, therefore there was no way to know the volume of demand in different areas of operation.

In accordance with paragraph 7.12.14 of the Council's Constitution, the Chairman suspended standing orders to allow members of the trade to participate in the discussion.

Two representatives of the Trade, Mr Rodney Nemeth of CABCO and Mr Richard Brown of West Berkshire Taxi and Private Hire Association addressed the Committee. Mr Nemeth stated that the survey had told them what they had expected - that there was no unmet demand. Mr Brown stated that although there were 191 taxis available from Taxi ranks there were also private hire vehicles, so there was also another option available in order to meet demand. The new development at Parkway would help to ease any queues at the ranks. They would like the Committee to proceed with the capping.

In response to questions from Councillors Zverko, and Tuck, Mr Nemeth and Mr Brown made the following points:

- Restricting vehicle numbers would help to give a better quality of life to drivers, so that they could then share working hours.
- Restriction of numbers would also mean that quality would be better guaranteed in the business – Mr Brown gave an example of a poor quality car that had been bought for £800 and was given 'disabled access' which he did not believe it provided.
- With both of the associations they represented, they accounted for around 180-190 Members as well as private hire operators.
- They would be happy to go ahead with another survey in 2 years time if it was required and were prepared to take on the costs this would involve.
- It was difficult to predict how many licences would be applied for in the next 6-12 months if there was no capping. However, their concern was a situation such as a company coming in and applying for 30 licences, taking their own existing drivers for example, which would result in longer hours for their drivers and risk of fatigue.
- This was the second survey that West Berkshire had undertaken and it told them what they already knew and had asked for – meaning that there could be a legitimate cap.

The Chairman reinstated standing orders.

In response to a question from Councillor Quentin Webb, Brian Leahy stated that the delay at the ranks was only a matter of minutes – there were very short waiting times. In

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October there would also be 17 more spaces with the Parkway development. Footfall patterns in the town once Parkway opened were as yet unknown. Councillor Webb commented that if a cap was set, then there might be an issue with people registering as many vehicles as possible.

Councillor Tony Linden stated that he believed the Trade should not be restricted, as advised by the DfT and Office of Fair Trading. Slow growth was expected now in the economy. Councillor Linden proposed that no capping be enforced.

Councillor Lazlo Zverko stated that while he was very sympathetic towards the issues that the Trade were facing, he was also concerned about helping the economic recovery in the area. He queried whether there were figures for drivers handing in their licenses. Brian Leahy responded that since 26th November 2009, 19 licences had been surrendered, but these had been subsequently replaced. This was due to retirements, vehicles becoming unusable or just leaving the Trade. Councillor Jeff Beck stated that it was not known if any of these were due to bankruptcy and Brian Leahy confirmed most had been due to retirement.

Brian Leahy stated that in 12 months this survey would no longer be valid in order to make a decision to cap, so they would need to re-survey. Councillor Jeff Beck highlighted this point to Members – if the decision was not to cap at the Committee meeting, another survey would be required in order to cap in the future.

Councillor Quentin Webb stated that the Parkway shops might have a negative effect therefore a survey would be needed. Brian Leahy explained that this would then be a further financial burden on the Trade as a survey costs a minimum of £15,000. It had taken 10 years for West Berkshire to undertake a further survey and this was at a cost to the Trade of £10,000 over 187 vehicles. If a survey was done again in 12 month's time then that would be an additional cost. If the 3 year cycle was adhered to, the next survey would be undertaken in May 2014. In response to a further question from Councillor Webb, Brian Leahy confirmed that any survey had to be independent and could not be carried out by Council Officers.

Paul Anstey explained to the Committee that the survey was a defining piece of evidence for decisions on policy matters. Members would not be advised to consider the possible future economic climate as the survey was a snapshot in time and was appropriate for the circumstances as they were at the current time. It was a very uncertain period of time and other financial considerations might not be the same at a future date – such as the Council budget to undertake another survey. There may be a situation in 12 months time when a new decision needed to be taken.

Councillor Jeff Beck stated that if Members decided to place a cap and in 2 year's time the situation had changed, the Trade had indicated that they would be willing to contribute to a further survey. If Members decided to let the status quo continue and in 12 month's time the Trade wanted to revisit the capping decisions, there would also have to be another survey.

Councillor Quentin Webb proposed a cap be introduced with a limit of 220, therefore giving some level of control over taxi numbers, which could be re-visited at a later date.

Councillor Jeff Beck confirmed with the Committee Members that there were no seconders for Councillor Linden's proposal not to enforce a cap. Councillor Ieuan Tuck seconded Councillor Webb's proposal.

The Committee voted in favour (5 Members in favour, 1 against and 1 abstention) of the proposal to enforce a cap on Taxi licences at 220, effective from the date of this meeting.

RESOLVED that: A cap on Taxi License numbers be enforced at limit of 220 effective from 29th July 2011.

7. **Air Quality Management in Thatcham**

Councillor Jeff Beck stated that this item was for information only.

Paul Anstey introduced the report (Agenda Item 5) concerning air quality management in Thatcham. The Transport Policy Task Group were the responsible group that considered these matters and the report had come through that group. He stated that tests had lead to declaring an air quality management area in Thatcham, within the blue line indicated on the map. This covered a section of the A4 from Chapel Street to Harts Hill Road. There would now be a period of consultation and engagement exercises. This was an officer based decision taken in consultation with the Portfolio Holder, Councillor Hilary Cole. The report had come to the Licensing Committee in order to inform Members that this piece of work was being carried out.

Councillor Jeff Beck stated that he was also a member of the Transport Policy Task Group who had received a presentation from Suzanne McLaughlin, Senior Environmental Health Officer. The group had been asked to agree the area that the blue line covered and had requested to know how the parameters had been determined. She had not known at the time and was to forward the information on to the Licensing Committee as had been minuted at the Task Group. Councillor Beck requested that the information be supplied to Members of the Licensing Committee and the Transport Policy Task Group.

Councillor Quentin Webb commented on the lack of figures in the report.

In response to a question from Councillor Ieuan Tuck, Paul Anstey stated that they would now be looking at how best to protect human health in the designated area; at the levels of exposure people living as well as working in the area were exposed to, and what they needed to do to ameliorate this. This was partly the purpose of the consultation activities that were to follow. They would also look at measures put in place in other areas to see if these would be appropriate. There was also a wider Air Quality Policy which helped to protect the wider population.

In response to a questions from Councillors Geoff Mayes and Quentin Webb, Paul Anstey confirmed that Nitrous Dioxide was purely traffic related, which was why it was the Transport Policy Task Group who dealt with air quality matters. Councillor Mayes thought that the number of traffic lights in this particular area would be a major contributor to the problem. Paul Anstey stated that the testing instruments were located at fixed positions – these would make the initial assessments and then further detailed assessments would be undertaken.

RESOLVED that: Suzanne McLaughlin send information regarding the parameters for the Air Quality Management zone in Thatcham, to Members of the Licensing Committee and the Transport Policy Task Group.

(The meeting commenced at 6.30 pm and closed at 7.35 pm)

CHAIRMAN

Date of Signature

Agenda Item 4.

Title of Report:	Transfer of Hackney Carriage Driver Licences
Report to be considered by:	Licensing
Date of Meeting:	13th December 2011
Forward Plan Ref:	

Purpose of Report: To advise Members of a request from the Taxi Trade Associations to review a decision taken on 26th April 2005 in respect of hackney carriage vehicle transfers

Recommended Action: To reaffirm the Council's intention to apply the Family Exemption condition approved in April 2005

Reason for decision to be taken: Request from the Taxi Trade

Other options considered: None

Key background documentation: Licensing Committee Reports 26th April 2005 and 14th March 2005. Minutes from the meeting 26 April 2005.

The proposals contained in this report will help to achieve the following Council Plan Priority(ies):

- CPP1 – Support our communities through the economic downturn** – to alleviate the impact on different communities and individuals who find themselves out of work and/or disadvantaged
- CPP2 – Raise levels of educational achievement** – improving school performance levels
- CPP3 – Reduce crime and the fear of crime**

The proposals will also help achieve the following Council Plan Theme(s):

- CPT1 - Better Roads and Transport**
- CPT2 - Thriving Town Centres**
- CPT3 - Affordable Housing**
- CPT4 - High Quality Planning**
- CPT5 - Cleaner and Greener**
- CPT6 - Vibrant Villages**
- CPT7 - Safer and Stronger Communities**
- CPT8 - A Healthier Life**
- CPT9 - Successful Schools and Learning**
- CPT10 - Promoting Independence**
- CPT11 - Protecting Vulnerable People**
- CPT12 - Including Everyone**
- CPT13 - Value for Money**
- CPT14 - Effective People**
- CPT15 - Putting Customers First**
- CPT16 - Excellent Performance Management**

The proposals contained in this report will help to achieve the above Council Plan Priorities and Themes by:

Portfolio Member Details	
Name & Telephone No.:	Councillor Hilary Cole - Tel (01635) 248542
E-mail Address:	hcole@westberks.gov.uk
Date Portfolio Member agreed report:	

Contact Officer Details	
Name:	Brian Leahy
Job Title:	Senior Licensing Officer
Tel. No.:	01635 519209
E-mail Address:	bleahy@westberks.gov.uk

Implications

Policy: The Councils policy is to consider any reasonable request from the trade. The current policy in respect of the transfer of licences is attached at Appendix B.

Financial: None

Personnel: None

Legal/Procurement: None

Property: None

Risk Management: None

Equalities Impact Assessment: EIA completed

Corporate Board's Recommendation: To be completed after the Corporate Board meeting.

Is this item subject to call-in?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval	<input type="checkbox"/>	
Delays in implementation could have serious financial implications for the Council	<input type="checkbox"/>	
Delays in implementation could compromise the Council's position	<input type="checkbox"/>	
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months	<input type="checkbox"/>	
Item is Urgent Key Decision	<input type="checkbox"/>	
Report is to note only	<input type="checkbox"/>	

Executive Summary

1. Introduction

- 1.1 This report provides the background to the Council's decision in 2005 to adopt a policy for the transfer of hackney carriages.

2. Proposals

- 2.1 The taxi trade have requested that Members consider a request to change this policy and allow the free transfer of hackney carriage vehicles complete with licence and plate.
- 2.2 Section 49 of the Local Government (Miscellaneous Provisions) Act 1976 provides for the transfer of a hackney carriage vehicle from one person to another by giving notice, in writing, to the Council within 14 days of the transfer.
- 2.3 Section 47 of the same Act provides for the attachment of conditions to a hackney carriage vehicle licence upon grant. It therefore follows that when a licence is transferred, a new licence is granted with conditions as deemed necessary by the Council.

3. Conclusion

- 3.1 The Family Exemption condition was and is legally applied within the Council's Standard Conditions.

Executive Report

1. Introduction

- 1.1 At a meeting of the Licensing Committee held on the 14th March 2005 a proposal to condition the transfer of hackney carriages (Taxis) was discussed. The suggested condition was worded as follows;

No taxi proprietor may enter into arrangements with another person to share an interest in a taxi plate in circumstances intended to avoid any condition providing facilities for the disabled.

- 1.2 The wording of this condition was deemed to lack precision when considered by the Council's legal advisor and new conditions were proposed at a Special Licensing Committee held on the 26th April 2005, preventing any new licence sharing arrangements except by members of a family. This became the Family Exemption. These conditions, the exemption and the report are attached as Appendix B. Members resolved at this meeting that the following condition be attached to all Hackney Carriage Proprietor's (Vehicle) licences;

If a taxi proprietor transfers in whole or in part his interest in a hackney carriage proprietor's licence, that transfer shall, subject to the family exemption, be treated as a grant of a new licence for the purpose of the applicability of the disabled access condition. Therefore, the disabled access condition requiring the provision of a fully wheelchair accessible vehicle will be applied to that licence with immediate effect from the date that the licence is transferred.

- 1.3 At that time, the Council had not imposed a limit on the number of taxi vehicle licences that it would issue.
- 1.4 At the Licensing Committee meeting held on the 29th June 2011, Members decided to re-impose a maximum limit to the number of taxi vehicle licences that the Council could issue; this limit was set at 220. The current number of HC (Taxi) vehicle licences issued is currently 201 with 2 applications pending.

2. The Trade Position

- 2.1 This request from the trade seeks to overturn the 2005 decision and allow for free market trade in the transfer of taxis, without the family exemption restriction applying.
- 2.2 This would mean that any protected licence, either, a vehicle licence (usually saloon cars) issued prior to 1st April 2001 and any vehicle licensed from 1st April 2001 which had previously been subject to the swivel seat condition (usually saloon cars), would have the right to transfer their vehicle under section 49 without having to comply with the Family Exemption condition.
- 2.3 As can be seen from the Committee papers from the 2005 meetings, the condition was imposed to ensure that a steady growth in wheelchair accessible taxis would be seen thus providing greater accessibility to wheelchair users.

- 2.4 The minutes from the 2005 meeting show that, at that time, the wheelchair accessible fleet stood at 4% of the total number of taxis. Today that figure stands at 42%. Swivel seated vehicles make up 17% of the total number of licensed vehicles thus leaving 41% as protected taxis. The total disabled access fleet is therefore 59%.

3. The Council's Position

- 3.1 The Council's position in 2005 was to ensure that there would be a significant increase, over time, in the accessibility of taxis for wheelchair users and other disabled, elderly and infirm persons. To this end, the Family Exemption was adopted.
- 3.2 As can be seen from the figures quoted above, the percentage of wheelchair accessible vehicles has risen from 4% out of a total of approximately 189 vehicles in 2005, to 42% out of a total of 203 vehicles in 2011. This would indicate that the policy has worked.
- 3.3 If the Council were to rescind the Family Exemption and allow the unrestricted transfer of protected vehicles, and the cap was reached at 220, the net result would be that the total number of wheelchair accessible vehicles available would be 46%. This would equate to an increase over the current 2011 total of 42% by 4%.

4. Consequences of Rescinding the Exemption

- 4.1 By rescinding the exemption, the Council would in effect be placing a value on the licence and plate issued to that vehicle. If a protected vehicle were transferred, the licence plate would have a financial value to the vendor where the purchaser wished to have a saloon type car rather than a wheelchair accessible vehicle. This would effectively mean that the Council's property would enhance the value of a protected licence holders business.
- 4.2 This would seriously disadvantage non protected vehicle licence holders wishing to transfer their licences, due to there being 17 licences still freely available, thus adding no value to the transferred licence plate.
- 4.3 When and if the cap of 220 is reached, all taxi vehicle licences would have a commercial value where new persons wish to enter the trade by purchasing an existing licensed vehicle.
- 4.4 Members may wish to take note of the above fact for deliberation at a future meeting regardless of whether the trade's request is granted or not.

5. Law Commission Review of Regulation of Taxi and PHV's

- 5.1 The Government has asked the Law Commission to undertake a full and complete review and reform of UK law relating to taxis and private hire vehicles in England and Wales.

5.2 The Commission will, in their words, be starting from scratch in carrying out this exhaustive review and will look at all aspects of current regulation before going out to extensive consultation around April 2012. Consultation will last for 3 months and will culminate in a draft bill and report to government by November 2013. The Government propose to introduce legislation before the end of the current Parliament.

6. Recommendations

6.1 With the announcement that the Law Commission consultation will extend to all interested parties, including the trade, the public, business corporations, regulators, etc, officers recommend that the Family Exemption should remain as a condition, unchanged, until at least, draft legislation has been published.

Appendices

Appendix A - Equalities Impact Assessment

Appendix B - Report - Taxis - Transfers of Vehicle Licence dated 26 April 2005

Appendix C - Minutes of meeting held on 26 April 2005

Appendix D – Reports from Meeting 14 March 2005

Consultees

Local Stakeholders: Hackney Carriage Vehicle Proprietors

Officers Consulted: Sarah Clark, Team Leader Legal and Electoral Services

Trade Union: None

Equality Impact Assessment – Stage One

Name of item being assessed:	Transfer of Hackney Carriage Vehicle Licences
Version and release date of item (if applicable):	V 1.1
Owner of item being assessed:	Steve Broughton
Name of assessor:	Brian Leahy
Date of assessment:	

1. What are the main aims of the item? To advise Members of a request from the taxi trade associations to remove conditions from taxi vehicle licences. To make a recommendation to Members.

2. Note which groups may be affected by the item, consider how they may be affected and what sources of information have been used to determine this. (Please demonstrate consideration of all strands – age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation)

Group Affected	What might be the effect?	Information to support this.
Taxi vehicle licence holders	To require all protected taxi vehicle licences to be able to be transferred only within family groups as determined by licence conditions.	Licensing Committee reports 14 March 2005 26 April 2005 & 13 December 2011.

Further comments relating to the item:

3. Result (please tick by clicking on relevant box)

<input checked="" type="checkbox"/>	High Relevance - This needs to undergo a Stage 2 Equality Impact Assessment
<input type="checkbox"/>	Medium Relevance - This needs to undergo a Stage 2 Equality Impact Assessment
<input type="checkbox"/>	Low Relevance - This needs to undergo a Stage 2 Equality Impact Assessment

<input type="checkbox"/>	No Relevance - This does not need to undergo a Stage 2 Equality Impact Assessment
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For items requiring a Stage 2 equality impact assessment, begin the planning of this now, referring to the equality impact assessment guidance and Stage 2 template.

4. Identify next steps as appropriate:	
Stage Two required	Yes
Owner of Stage Two assessment:	Steve Broughton
Timescale for Stage Two assessment:	By 13th December 2011
Stage Two not required:	

Name: Brian Leahy

Date: 2nd December 2011

Title of Report: **Taxis – Transfers of Vehicle Licences**

Item 3

Report to be considered by: Licensing Committee

Purpose of Report:

To introduce measures to prevent the avoidance of conditions intended to provide access for the disabled.

Recommended Action:

That Committee approves the conditions at Paragraph 3 of the Report in relation to licensed hackney carriages:

List of other options considered:

None

Key background documentation:
(bulleted list format)

Agenda for Licensing Committee of 14th March 2005.

Contact Officer Details

Name:	John Priest
Job Title:	Environmental Health & Licensing Manager
Tel. No.:	01635 519167
E-mail Address:	jpriest@westberks.gov.uk

1. Background

1.1 This report refers to hackney carriages, which for readability here are called taxis. It does not include private hire vehicles which are subject to different rules.

1.2 In September 2004, this committee considered a detailed report suggesting various changes in the licensing of taxis to improve access by the infirm, elderly and the disabled. Committee resolved to suspend issuing further licences and to set up a member working party. That Working Party reported back at the March 2005 meeting of the Committee, its recommendations were accepted, and committee resolved accordingly. However in doing so no account was taken of a recommendation made at the earlier September 2004 meeting. This addressed the need to introduce a condition designed to prevent proprietors entering into arrangements to share an interest in a licence intended to avoid conditions aimed at improving access for the disabled.

1.3 At the meeting of this Committee on the 14th March 2005, in summary, it was resolved that the position regarding the application of disabled access conditions would be as follows:

1. **Licences issued prior to 1st April 2001.**
These licences would continue to operate free of any disabled access conditions.
2. **Licences issued from 1st April 2001 to date.**
These licences had previously been subject to the SAV conditions imposed as a result of the decision of the Licensing Committee in June 2000.

The licences within this category can be sub-divided into two groups:-

a) Those who complied with the old SAV condition by either providing a wheelchair accessible vehicle or a swivel seat.

Proprietors who complied with the SAV condition will be allowed to continue to operate under that condition and will not be affected by the new disabled access conditions.

b) Those who did not comply with the SAV condition and either appealed to the Courts against the condition or did not comply pending the outcome of the appeals brought by a number of proprietors.

Any proprietor falling within this category must supply a wheelchair accessible vehicle by 1st September 2006.

3. **New Licences**
All new licences in respect of hackney carriage vehicles will contain a condition requiring that the vehicle be fully wheelchair accessible with immediate effect.

1.4 It can therefore be seen that taxis first licensed before 1 April 2001 need not provide facilities for disabled passengers such as being wheel chair accessible. Licences issued subject to the SAV condition will also not be required to comply immediately with the new disabled access condition. It has been the experience in the past that exempt licences could change hands in such a way as to avoid compliance with new conditions. Members clearly wished to avoid this happening in respect of the new disabled access conditions.

2. Options

2.1 When originally discussed by members of this Committee there was general support for the suggested wording:

No taxi proprietor may enter into arrangements with another person to share an interest in a taxi plate in circumstances intended to avoid any condition providing facilities for the disabled.

2.2 Subsequent legal advice is that this condition may lack precision and is too subjective. Instead it is now proposed that a condition is applied preventing any new licence sharing arrangements except by members of a family.

2.3 Given that the restrictions on the number of taxi licences was lifted some time ago, this condition should not interfere with the legitimate acquiring of a taxi vehicle licence. Anyone meeting the necessary conditions will be granted a taxi licence irrespective of how many licences have already been issued. New licences will however only be granted for taxis that are fully wheelchair accessible.

3. Recommendation

3.1 In order to avoid the possibility that licences will be transferred to avoid the disabled access condition, it is recommended that the following conditions be attached to ALL licences.

1. If a taxi proprietor transfers in whole or in part his interest in a hackney carriage proprietor's licence, that transfer shall, subject to the family exemption, be treated as a grant of a new licence for the purpose of the applicability of the disabled access condition. Therefore, the disabled access condition requiring the provision of a fully wheelchair accessible vehicle will be applied to that licence with immediate effect from the date that the licence is transferred.

The Family Exemption

2. Any transfer by a hackney carriage proprietor of an interest in his licence, in whole or part, which is limited to a transfer of such interest to a member of the proprietor's immediate family as defined below, shall not be affected by the disabled access condition to any greater extent than the licence would have been affected had the transfer not occurred. Therefore, upon a transfer to a family member of an interest in a hackney carriage proprietor's licence, the relevant disabled access condition applicable to that licence immediately before the transfer was effected will remain in force.
3. For these purposes, 'immediate family' shall mean the:-
 - Mother or Father
 - Spouse or partner
 - Children
 - Brothers or Sisters
 - Step-Mother or Step-Father
 - Step-Children
 - Step-Brothers or Step-Sisters

of the hackney carriage proprietor, but shall not extend to any additional family member.

4. Where it is claimed upon the transfer of an interest in a hackney carriage proprietors licence that the family exemption applies, it shall in every case be for the proprietor of the licence to prove that a family relationship exists within the above definitions.

Appendices *(in list format)*

None

Implications

Policy:	Applying this restriction will assist in helping to maintain a proportion of the taxi fleet with facilities for the disabled.
Financial:	None
Personnel:	None
Legal:	The suggested wording should improve clarity and legal precision.
Environmental:	None
Equalities:	This condition will ensure the elderly, the infirm and the disabled have reasonable access to taxis.
Property:	None
Risk Management:	None
Community Safety:	None

Consultation Responses

Local Stakeholders:	The limited time available has prevented detailed discussion with the taxi trade on the wording of this condition. However the trade was consulted and was in general agreement with the earlier wording suggested in September 2004. However this latest version is different and Members may wish to suspend standing orders to allow representatives of the trade to address the Committee.
Officers Consulted:	Elizabeth Howlett, Legal Services.
Trade Union:	Not applicable.

LICENSING COMMITTEE

MINUTES OF THE MEETING HELD ON 26 APRIL 2005

Councillors: Geoff Findlay (*Chairman*) (P), Peter Argyle (P), Billy Drummond (P), John Farrin (*Vice-Chairman*) (AP), Manohar Gopal (P), Sally Hannon (P), Roger Hunneman (AP), Owen Jeffery (AP), Tony Linden (A), Mrs Irene Neill (P), Alexander Payton (AP), Mike Rodger (A), Andrew Rowles (P), Quentin Webb (P)

PART I

24. APOLOGIES.

Apologies for inability to attend the meeting were received on behalf of Councillors John Farrin, Roger Hunneman, Alexander Payton and Mike Rodger.

25. DECLARATIONS OF INTEREST.

There were no declarations of interest received.

26. DISABLED TAXI ACCESS.

The Committee considered a report (Agenda Item 3) concerning the transfers of vehicle licenses for taxis. The recommendations in the report of the Working Party set up to consider changes in the licensing of taxis to improve access by the infirm, the elderly and the disabled had been accepted at a meeting of the Licensing Committee on 14 March 2005. However, no account had been taken of a recommendations made at a meeting of the Committee in September 2004, addressing the need to introduce a condition designed to prevent proprietors entering into arrangements to share an interest in a licence intended to avoid conditions aimed at improving access for the disabled. This report sought to address this issue.

.Mr Nemeth, a representative of the West Berkshire Hackney Carriage and Private Hire Association, in addressing the Committee made the following points:

- He had attended the original policy meeting with the Working Party and had welcomed the measures introduced on 14th March. The Association had accepted the concern of Members to keep a percentage of the fleet accessible to the disabled.
- The Association had thought that the aim of introducing the conditions was to increase the percentage of fully wheelchair accessible taxis to 30 - 40% of the fleet over a period of time, with 50 – 60% remaining as saloon cars. They felt that this split would result in the trade, the needs of the public and the disabled well represented.
- He felt that if the conditions as set out in the report were to be imposed on proprietors then the percentage of fully wheelchair accessible taxis would rise to 100%, and the 50% would be eroded. He suggested that those licenses issued before April 2001 should keep their grandfather rights and transfer with no restriction until such time as Government legislation changed, thus keeping a balanced fleet.

Members noted that Government intended to introduce regulations requiring taxis to be wheelchair accessible by 2010 with full implementation by 2020. Currently 4% of the fleet in West Berkshire was wheelchair accessible. Members were mindful that there was an increasingly ageing population, and that more premises were being made suitable for the disabled. This would result in an increased demand for taxis which were accessible to the elderly, the aged and the disabled.

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RESOLVED that:

1. The following conditions be attached to all licences:
 - a) If a taxi proprietor transfers in whole or in part his interest in a hackney carriage proprietor's licence, that transfer shall, subject to the family exemption, be treated as a grant of a new licence for the purpose of the applicability of the disabled access condition. Therefore, the disabled access condition requiring the provision of a fully wheelchair accessible vehicle will be applied to that licence with immediate effect from the date that the licence is transferred.

The Family Exemption

- b) Any transfer by a hackney carriage proprietor of an interest in his licence, in whole or part, which is limited to a transfer of such interest to a member of the proprietor's immediate family as defined below, shall not be affected by the disabled access condition to any greater extent than the licence would have been affected had the transfer not occurred. Therefore, upon a transfer to a family member of an interest in a hackney carriage proprietor's licence, the relevant disabled access condition applicable to that licence immediately before the transfer was effected will remain in force.
- c) For these purposes, 'immediate family' shall mean the:-
 - Mother or Father
 - Spouse or partner
 - Children
 - Brothers or Sisters
 - Step-Mother or Step-Father
 - Step-Children
 - Step-Brothers or Step-Sisters

of the hackney carriage proprietor, but shall not extend to any additional family member.

- d) Where it is claimed upon the transfer of an interest in a hackney carriage proprietors licence that the family exemption applies, it shall in every case be for the proprietor of the licence to prove that a family relationship exists within the above definitions.

27. ANNUAL REPORT OF THE POLICE

Inspector Peter Edwards and Sergeant Shane Cook from Thames Valley Police addressed the Committee.

Inspector Edwards informed the Committee that the Annual Report of the Police was similar to the Brewster Report. It outlined the Police's current approach to licensing issues based upon the four objectives of the Licensing Act 2003 and was an up-to-date document representative of the views of the Police.

Inspector Edwards reported that West Berkshire was recognised as a safe county with relatively low crime levels. Thames Valley Police continued to work with licensees and generally maintain good relationships with them. The Police would not be complacent about the fact that the new Licensing laws presented new opportunities to tackle existing issues around licensed premises.

During close consultation for West Berkshire's Licensing Policy, Thames Valley Police had forged a strong relationship with the Council. Inspector Edwards added that the Police looked forward to

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working with the Licensing Committee under the new system which transfers licensing authority from the criminal courts to the Council.

The prevention of crime and disorder

Inspector Edwards cited the first objective of the Licensing Act 2003 as the primary focus for the Police, with regard to licensing issues. Whilst in many areas of the country violent crime had risen, in West Berkshire the figures for Actual Bodily Harm (ABH) had fallen from two years previously. Much of the current success was down to the group Pub Watch as a communication and cooperation tool. This group had successfully created an agreement of exclusion of the serious offenders from all premises, and the Police found this was a great deterrent.

Currently under development was the Newbury town centre Alcohol Impact Assessment. The Police would use the findings of this Assessment to object to future license applications where appropriate. Inspector Edwards informed the Committee that the Police would approach the Council with the request to adopt the Alcohol Impact Assessment as part of the West Berkshire Licensing Policy.

Public safety

In Newbury, the presence of 40-50 Pub watch door staff on Fridays and Saturdays provided useful support to Thames Valley Police. Door staff were an effective resource for several reasons: they provided visual reassurance for the public, expelled unruly customers, maintained safety and provided first aid where necessary. Inspector Edwards reported that almost half of all violence was alcohol related. Disturbance of this kind, such as the use of glasses and bottles in assault, was not high in West Berkshire. Inspector Edwards informed the Licensing Committee that they were considering imposing conditions for premises, such as serving drinks in plastic glasses and counting bottles, in order to reduce the opportunity for violence of this nature.

Inspector Edwards remarked that in the experience of Thames Valley Police, licensees sought to have the maximum capacity possible for their premises. Overcrowding was said to impact upon public safety and the Police closely monitored capacities applied for by individual application, as well as the cumulative effect of increased licensed premises and capacities.

CCTV coverage continued to be patchy in some premises which was often due to poor maintenance. Inspector Edwards reported that it was very important that a high standard of CCTV was maintained across premises in order that public reassurance was upheld and criminal occurrences were recorded. New applications and variations were an opportunity to implement requirements for a certain standard of CCTV.

The prevention of public nuisance

Although the Police harbored no major concerns regarding Public Nuisance, they acknowledged that there was much potential for complaints relating to disturbance from licensed premises. Where it was appropriate, the Police would work with the Council and possibly utilise legislation such as the Environmental Protection Act in the issuing of licenses.

Late night refreshment premises and vehicles impacted upon Crime and Disorder issues. The Police frequently attended late night refreshment premises in order to deal with public order incidents; often occurrences took place after these premises had closed. In Newbury town centre, the combined provision of late night refreshment and a taxi rank on the Market Place had been effective in reducing the amount people lingering in the early hours.

The protection of children from harm

Inspector Edwards informed the Committee that there was no evidence of widespread underage drinking but Pub Watch had reported that there were frequent attempts to enter premises using false identification. The Police were considering issuing a recommendation that only two types of identification be accepted: a photo driver's license or passport. Inspector Edwards reported that Thames Valley Police would continue to work with West Berkshire Council in keeping abuse of legislation low.

In Thatcham, a pilot multi-agency group had been successfully addressing the issues surrounding underage drinking, including working with local primary schools to identify the potential for problems. If the work of this group met best practice conditions, there would be the potential to roll-out over West Berkshire.

28. CURRENT STATE OF LICENSING IN TRANSITION

The Committee heard a presentation from John Priest and Brian Leahy concerning the current state of Licensing applications. The new system had come into effect on 7th February 2005, and the last date for applications to be received was 6th August 2005. There was no slippage period.

There were three types of applications, personal, premises, and new premises. Of the expected 2,000 applications for personal licenses only 26 had been received so far, and of the expected 400 premises applications only five had been received. There had been two new premises applications, both of which were going to a Licensing hearing on 28th April. Many applications had been returned as they had not been correctly completed, and Licensing Officers were taking many telephone calls, particularly from Solicitors, asking for advice on completion of the forms. Licensing Officers felt that they had good routines in place, and good relationships with authorities such as the Police and Fire Authority. The Council was ready to deal with applications as they came in, but there was concern that the timescale was reducing rapidly and that resources would be stretched to cope with the expected influx. If there were to be non-determination of applications premises licenses would be deemed to have been granted, while personal licenses would be deemed to be not granted. Officers were of the opinion that there might be a number of people and premises not legitimately able to carry on trading.

Officers suggested a number of reasons why there had been so few applications to date. These included:

- the lateness and poor drafting of the regulations;
- problems with obtaining plans of premises and copies of original licenses, which were the basis for the new licence. There were up to 15 pages of embedded conditions in the original licences which licensees could apply to have removed;
- confusion within the trade as to who should be applying for the license, as there were many instances of tenants, lessees, pubcos and Solicitors, all of whom might be assuming that someone else was applying for the licence;
- complex statutory forms
- costs – currently the cost of the licence was £37 for three years, whereas under the new system the costs could amount to £4,000;
- apathy, which Officers thought played a considerable part in the dearth of applications.

Officers had held several trade forums, sent out many newsletters dealing with both general and specific aspects of licence application, and had advertised in the media. In addition they had

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undertaken many personal visits. They would be sending out further newsletters, continuing local publicity, having face to face meetings with licensees, and targeting specific groups, particularly those for whom English was not a first language.

Officers gave reassurance that no matter how late the applications were received they would all be given due care and attention.

Officers had spoken at length to the local press, but as yet no article had appeared. Police Sergeant Shane Cook offered to encourage them to do so when he had a meeting with them the next day.

Members were concerned that as yet the Council had not licensed its own areas, but were informed that Brian Leahy would be holding a meeting with a senior Officer to discuss this.

(The meeting commenced at 6.30 p.m. and closed at 8.05 p.m.)

CHAIRMAN

Date of Signature:

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Title of Report: **Disabled Taxi Access**

Item 4

Report to be considered by: Licensing Committee

Purpose of Report:

To report back to Members on the outcome of the Task Group's investigation into disabled access to taxis in West Berkshire.

Recommended Action:

To note the report and adopt the recommendations listed in the report.

List of other options considered:

Three options are set out in the report including taking no further action and appealing against the Stipendiary Magistrate's decision

Key background documentation:

- None

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Supporting Information

1. Background

- 1.1 The Licensing Committee considered a report about Disabled Access to Taxis at its meeting on 7 December 2004 which is attached as Appendix 4(a).
- 1.2 In July 2000 the Council, as the Licensing Authority, considered reports on disabled access to taxis and agreed that taxis licensed after April 2001 should either be fully wheelchair accessible or have an approved swivel seat fitted to the front passenger seat. Taxis operating under licenses issued prior to April 2001 would be exempt from this condition.
- 1.3 Many taxi operators met the condition, but a small number did not choose to do so and chose to appeal. The Stipendiary Magistrate allowed the appeal as he felt that swivel seats, although safe, were not suitable for all passengers. However he noted that, had the Council chosen to impose only the fully wheelchair accessible option, the appeal would have been dismissed.
- 1.4 In September 2004 the Licensing Committee imposed a temporary moratorium on granting taxi licenses in order for a Task Group to be set up who would undertake an investigation into disabled taxi access in the District.
- 1.5 The Task Group, consisting of four Members, met with representatives from the taxi trade and from disabled users to discuss issues concerning taxi access and disability awareness training. Their report and recommendations following these meetings are attached at Appendix 4.

Appendices

Appendix 4(a) – Taxis – Access by the Disabled (Report to the Licensing Committee on 7th December 2004)
Appendix 4(b) – Report and Recommendations by the Licensing Committee Task Group reporting on Disabled Access to taxis in West Berkshire

Implications

Policy:	There is no formal policy on this subject other than the broad policy of the Council linked to equalities below.
Financial:	The recommendations may tend to reduce the number of taxis on the road. This in turn may affect income from licensing although the exact impact is difficult to predict.
Personnel:	None
Legal:	The report summarises the recent legal actions and the recommendations involve imposing new licence conditions for taxis. These reflect the experience of the last appeal.
Environmental:	If Members opt to resolve to impose a wheelchair-only policy for new taxis this may result in fewer additional taxis on the road. The exact impact is difficult to predict.
Equalities:	The provision of reasonable levels of access to taxis by disabled people is central to the Council's equality policy. Disability awareness training for drivers of the taxi service will enhance the service provided by the taxi trade.

Property: None
Risk Management: None
Community Safety: None

Consultation Responses

Local Stakeholders: Representatives of disabled groups and the taxi trade.
Officers Consulted: John Priest, Environmental Health Manager
Brian Leahy, Senior Licensing Officer
Trade Union: None

Title of Report:	Taxis – Access by the Disabled	Item 4
Report to be considered by:	Licensing Committee	

Purpose of Report: To outline recent legal developments and to propose new actions supporting access to taxis by disabled people.

Recommended Action:

(1) Taxis first licensed before 1 April 2001 remain unaffected and not subject to additional local conditions concerning access or adaptation with the exception of (5) below which will apply;

(2) Adapted taxis (that is, those first licensed after 1 April 2001 which were required to be, and were, equipped with a swivel seat or which provided access to wheelchairs) which retain the swivel seat or which become fully wheelchair accessible remain unaffected. The operator of such a taxi shall not:

(a) Remove or replace the approved swivel seat or

(b) Change the vehicle for another that is not equipped with an approved swivel seat or is not fully wheelchair accessible

In addition, condition (5) will apply.

(3) Unadapted taxis (that is, taxis first licensed after April 2001, which were not equipped with either a swivel seat or that could provide full access to wheelchairs) shall provide full wheelchair accessibility from either the next change of vehicle or 1 April 2006 whichever is the sooner. In addition, condition (5) will apply.

(4) All taxis licensed after 7 December 2004 will provide full wheelchair accessibility.

(5) No taxi proprietor may enter into arrangements with another person to share an interest in a taxi plate in circumstances intended to avoid any condition providing facilities for the disabled.

List of other options considered: A number of other options are set out in the report including taking no further action pending national legislation.

Key background documentation: None

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1. Background

- 1.1 A taxi here means a licensed hackney carriage. The term therefore excludes licensed private hire vehicles that operate under different rules. It is important to note too that when discussing taxis in this context, the term relates to the licence or plate not a specific vehicle. Hence as an old vehicle wears out, its plate can legally be transferred to a newer vehicle. The old vehicle is no longer a taxi and the new vehicle becomes a taxi with all the legal benefits and restrictions that brings.
- 1.2 Some years ago the Council received various reports on the subject of taxis and in particular access to them by disabled people. One of the reports set out options for introducing a series of measures to improve access. Members decided to opt for changing the conditions linked to taxi plates by requiring taxis first licensed after April 2001 to provide either an approved swivel seat for the front passenger or to provide a complete vehicle that was fully wheelchair accessible.
- 1.3 Older taxis, that is, those first licensed before April 2001, were to be exempted. The new condition did not apply immediately. Instead it was to become operational on 31 August 2003 and all new applicants were advised of this. In the next few years many taxi operators met the condition by either buying full wheelchair accessible vehicles or fitting the approved swivel seat. However a minority of operators did not do so before the deadline. Instead, when the new condition became operational, they chose to appeal it. In all, six operators appealed the condition in the magistrates' court. The appeal found in favour of the operators because the stipendiary magistrate felt the approved swivel seat, although safe, was not appropriate for some passengers. In his ruling he said that had the Council sought to impose the wheelchair accessible condition alone, he would have rejected the appeal. He was however unable to split the two conditions, a point in law subsequently found to be in question.
- 1.4 Naturally an appeal against this finding was considered. There were several points in favour of mounting a further appeal both legal and practical. However it became obvious that assistance from central government, the seat suppliers and the motor trade was not likely to materialise in time or in a form officers had been led to believe. On robust legal advice a decision was made not to pursue the action.
- 1.5 Knowing a further appeal was at least a possibility, this committee received a report at its September 2004 meeting and resolved to suspend issuing further taxi licences pending. This would prevent further challenges to the conditions and give an opportunity for officers to work up and consult the trade on options for further action. The trade consultation has now taken place and is reflected later in the recommendations.

2. The Basis for Any Next Moves.

- 2.1 To assist in deciding what, if anything, to do next, it is useful to consider the existing taxi fleet as falling into three categories:
 - "Older" taxis first licensed before April 2001. These were exempt from the earlier changes. Most are saloon cars, do not have facilities for the disabled and most are not wheelchair accessible.
 - "Adapted" taxis first licensed after April 2001 which were equipped with a swivel seat or which provided access to wheelchairs.
 - "Unadapted" taxis first licensed after April 2001, which should have, but which were not, equipped with either a swivel seat or could provide access to wheelchairs.

- 2.2 In addition there is a fourth category, namely those taxis yet to be licensed. Some of these would ordinarily have been licensed were it not for the moratorium imposed in September 2004 and are therefore waiting in the wings. Most however are the unknown applications yet to be received in the normal turn of events.
- 2.3 In considering all future options it seems reasonable not to change the general policy in relation to older taxis. The view, long taken by the Council, is these taxis were already in the fleet and it would be unfair to impose a retrospective condition. It would also mean the fleet would retain a proportion of unadapted taxis. This is the view of the taxi trade who say it is important to keep some saloon cars which are suited to the rural areas and which are favoured by some passengers. Whilst this was certainly true some years ago, cheaper alternatives to traditional London Cab designs are now commonly available. These newer designs are based on saloon cars or vans and for many they are lighter, more manoeuvrable and more comfortable in rougher conditions.
- 2.4 The Council can legally impose conditions for disabled access on these older taxis if a fully disabled friendly fleet becomes the objective. However to do so means the risk of legal challenge increases. This may in any case, eventually be overtaken by national requirements in the more distant future when all taxis will need to provide facilities for the disabled. When exactly this might happen remains unclear.
- 2.5 On balance, officers recommend continuing the current policy of exempting older taxis. However, it is clear some taxi operators have acquired older taxi licenses by becoming a joint holder with an existing plate holder. The first holder then relinquishes the shared plate to the newcomer by sale or otherwise. By this means the newcomer gets a plate that is, and will probably remain, exempt from new conditions. Officers with taxi trade support agree this is outside the spirit of members' wishes and should be stopped. This can be achieved by a change in the taxi conditions reflected in the main recommendation to this report.
- 2.6 Adapted taxis, either by virtue of a swivel seat or full wheelchair access, have provided good service for several years to the elderly, the infirm and the disabled. The courts have rejected Council moves to have swivel seats as an alternative to full wheelchair access because they are difficult for some people to use. However their safety has never been an issue and whilst not popular with some taxi operators, they have been used with reasonable success. The taxi trade and officers feel that the Council, in any future decisions, should support those taxi operators who fitted and continue to provide swivel seats and this is reflected later in the main recommendation.
- 2.7 Unadapted taxis form a significant proportion of newer taxis in the fleet. Only a small number arose however because their operators appealed against the condition requiring either a swivel seat or full wheelchair accessibility. The majority arose because their operators were genuinely awaiting the outcome of the appeal or possibly because they had little intention of ever meeting the spirit of the condition. It is perhaps significant that when taking out a licence after April 2001, all operators were made fully aware the new condition would be applied some years hence. However they chose not to raise objections until the condition came into force when they then appealed.
- 2.8 In September 2004 this committee decided to suspend issuing any new plates because a decision was still awaited about a possible appeal by the Council to the earlier court case. A question now arises therefore about new licences and what conditions concerning disabled facilities can and should be imposed. It is clear from the court case that a condition requiring a swivel seat cannot realistically be imposed. Equally, the court has indicated that a condition imposing full wheelchair accessibility is legal and would probably be successful if challenged. In broad terms, the taxi trade and officers favour such a move.

3. Options.

- 3.1 The first option is the officer recommendation set out at the beginning of this report. This option is supported by representatives of the taxi trade.
- 3.2 Other options members may wish to consider revolve around or are permutations of:
- (a) A minimal or do nothing approach, pending national legislation. It is very unclear when this may come about but some observers predicted 2012.
 - (b) A policy of full wheelchair accessibility for all taxis irrespective of when first licensed taking effect either immediately or from a date to be determined.
 - (c) A permutation or change in commencement date(s) detailed in the officer recommendation. For example, the commencement date could be a sooner or a later date.

Appendices

None

Implications

Policy:	There is no formal policy on this subject other than a broad policy of the Council linked to equalities below.
Financial:	The recommendations may tend to reduce the number of taxis on the road. This in turn may affect income from licensing although the exact impact is impossible to predict.
Personnel:	None
Legal:	The report summarises the recent legal actions and the recommendations involve imposing new licence conditions for taxis. These reflect the experience of the last appeal and generally recommend the imposition of a wheelchair only condition for new licences. This is itself appealable and therefore carries a degree of risk. Like most actions of this kind, it also brings a risk of judicial review.
Environmental:	If members opt to resolve to impose a wheelchair only policy for new taxis, this may result in fewer additional taxis on the road. The exact impact is however difficult to predict.
Equalities:	The provision of reasonable levels of access to taxis by disabled people is central to the Council's equality policy.
Property:	None
Risk Management:	None
Community Safety:	None

Consultation Responses

Local Stakeholders:	Representatives of disabled people and representatives of the taxi trade.
Officers Consulted:	Elizabeth Howlett, Legal Services Manager
Trade Union:	None

REPORT AND RECOMMENDATIONS BY THE LICENSING COMMITTEE TASK GROUP REPORTING ON DISABLED ACCESS TO TAXIS IN WEST BERKSHIRE

INTRODUCTION

1. The Licensing Committee meeting (10 December 2004) agreed that a small Task Group of four Members (Cllrs Findlay (Chairman), Farrin, Hunneman and Rowles) would prepare a report on Disabled Access to Taxis and Disability Awareness Training. The Task Group met on 11 January, 1 February and 24 February 2005. This report summarises the evidence which was received from both the Trade and the West Berkshire Disability Alliance, the Task Group's discussions and their Recommendations to the Licensing Committee.

2. **Background**

In July 2000, the Public Protection Committee agreed to end the dual town/district licensing system for taxis and the then in place limit on the number of taxi licences issued for both zones. At that time, the Council, as the Licensing Authority, also considered reports on access to taxis by the disabled and it was decided that whereas taxis operating under licences first registered before April 2001 would be exempted, taxis first licensed after that date would have to have either an approved swivel seat fitted for the front seat passenger or be fully wheelchair accessible. The condition on accessibility became operational on 31 August 2003. Although many taxi operators met the condition by either buying a fully wheelchair accessible vehicle or fitting an approved swivel seat in the intervening years, a minority (6 operators) did not do so before the August 2003 deadline and chose to appeal. In the subsequent hearing, the Stipendiary Magistrate allowed the appeals as he was of the opinion that the approved swivel seat, although safe, was not suitable for all passengers. Further, it was noted that had the Council chosen to impose only the wheelchair accessible option, the appeals would have been dismissed. It was against this background that the Licensing Committee decided in September 2004 to impose a temporary moratorium on granting taxi licences. That moratorium was extended at Committee's December 2004 meeting to provide time for a Member Task Group to take evidence from the both the taxi trade and disabled users in West Berkshire.

3. **Present position within West Berkshire**

Taxis licensed before 1 April 2001 remain unaffected by the subsequent local conditions – the installation of an approved swivel seat or full wheelchair accessibility - imposed on taxi licences issued after that date. The temporary moratorium on the issue of further taxi licences remains in place until the Licensing Committee considers the matter at its next meeting on 14 March 2005. On 1 Jan 05 there were 184 licensed Hackney carriages in West Berkshire; six were fully wheelchair accessible, eight are MPVs and 12 had a front passenger 'swivel' seat fitted.

4. **Nationally**

Although the Government has recently chosen to further implement the requirements of the Disability Discrimination Act (DDA) 1995, Sections 32-39 of the Act, which aim to ensure that disabled people have the same flexibility and choice in their use of licensed taxis as the rest of travelling public, have yet to be brought into force. In particular, although Section 35 of the Act provides the Secretary of State with power to issue regulations on taxis accessibility, the Government has yet to exercise this

option. When the Chairman approached the Disabled Persons Transport Advisory Committee (DPTAC), which provides advice to Government, the DPTAC noted in a written response that:

"The Department (Department of Transport) has announced an intention to introduce regulations for accessible taxis. If introduced, the regulations will apply to towns and cities with a population of 125,000 or more and would come into force in 2010 with an end date of 2020. Before regulating, the Department will go to consultation."

5. West Berkshire Council

Whereas there is general guidance within the DDA, and a clear intention that access to transport should be available to all the population without discrimination, there is no mandatory requirement at present to provide access for the disabled to taxis. However, the Council's Corporate Plan, which is built around six Corporate Values, is based on Equality, Responsiveness and Continuous Improvement. In turn, this Plan seeks to support the West Berkshire Community Plan in furthering 'equality of access to services and facilities'. The Transport Priority within the Community Plan Vision 'A Better Future for All' specifically notes 'Developing transport solutions matched to people's needs across the district'. In seeking to address the need to improve disabled access to taxis, the Task Group would be furthering both the Community Plan and the Corporate Aims of the Council

6. The Future

The Task Group recognised that the Council faced a difficult situation following the successful appeals against the introduction of its July 2000 policy on disabled access to taxis. Given that, there were three alternative courses of action:

- Do nothing;
- Change the Policy
- Appeal against the decision of the Stipendiary magistrate

The Council decided that to 'do nothing', would have left the existing policy 'in limbo' with no real chance of enforcement. An appeal would have been expensive and there could have been no certainty that the judgement would have endorsed the Council's policy on disabled access even though the Stipendiary Magistrate had indicated that he would have accepted a policy based solely on wheelchair accessibility. To have gone to appeal would have created a further period of uncertainty and additional costs.

7. Consultation

It was against this background that the Task Group decided it would consult widely with both relevant organisations in West Berkshire and the taxi trade before making recommendations on changes to the 2001 policy on disabled access. Contributions on disabled access to taxis were invited by the Chairman in personal letters to officers of voluntary organisations (the West Berkshire Disability Alliance, MENCAP, Age Concern, and the Newbury Volunteer Service) within the District. The public were invited to comment through the issue of a formal Council press release and subsequent press and local radio articles. Information was disseminated to taxi proprietors in the January 2005 regular Taxi Trade Newsletter circulated by Licensing Officers to those holding taxi licences. Interested parties who responded were then invited to meet with members of the Task Group and discussions were held, as reported below, with:

- Mr Mick Hutchins, Chair of the West Berkshire Disability Alliance
- Mr Karl O'Hagan and Mr Kevin Archibald, Directors of CABCO, Thatcham

- Mrs Judy Beales & Mr Rodney Nemeth, Chair and Vice-Chair of (West Berkshire Hackney Carriage & Private Hire Association
- Mr Richard Brown and Mr Ian Dunn of Theale Taxis.

The Task Group wishes to record its thanks to those who attended the discussions held at the Council Offices on 01 & 24 February 2005 for both their written and verbal input.

TERMS OF REFERENCE

8. Terms of Reference

The Task Group agreed at its first meeting that its discussions should be focussed and that matters which might arise during comment and discussion with the public and the taxi trade which were not directly related to disabled access to taxis in West Berkshire and Disability Awareness Training should be dealt with in another forum. Comment and discussions were thus guided by:

'To propose a policy on access to taxis which would best serve the interests of disabled users of taxis in West Berkshire whilst being fair and proportionate to individual taxi proprietors and the trade as a whole.'

EVIDENCE

9. West Berkshire Disability Alliance

In response to the Licensing Committee's decision to seek the views of the disabled community on access to taxis, the Chair of the West Berkshire Disability Alliance (WBDA) passed a copy of an Action Plan 'Transport Provision for Disabled People in West Berkshire (2005)' to the Chairman. As a member of the Transport Action Group (part of the West Berkshire Partnership), the WBDA had identified five key areas for access, one of which was Access to Taxis. That Action Plan accepted that although there were no clear National/Government guidelines, it would wish all disabilities to be taken into account by the Task Group in revising the Licensing Policy, not just those of wheelchair users. Further, the report concluded that there was no real evidence to suggest that all the taxis in West Berkshire needed to be wheelchair accessible; in fact a consensus of disabled users pointed to the need for a diverse fleet of vehicles. The Task Group accepted that whereas the firmer ride of the Hackney Carriage was suitable in truly urban areas, such vehicles would not be suitable given the rural nature of West Berkshire. Further, WBDA's Chair pointed out during discussion with the Task Group that a diverse fleet of taxis would allow those suffering from a range of disabilities (ambulant problems, sight and hearing disabilities, mental health and learning disabilities) to select the type of vehicle which was best suited to their needs, which they felt confident to use, and found to be most comfortable. The WBDA's report 'Transport Provision for Disabled People in West Berkshire' also called for Disability Awareness Training.

10. Discussions with the Chairman (Mr Mick Hutchins) of the West Berkshire Disability Alliance on 1 February 2005

Referring to the WBDA's report (noted above), Mr Hutchins explained that he had subsequently circulated a questionnaire in December 2004/January 2005 to a range of organisations and groups covering a wide range of disabilities to provide evidence to the Task Group from both organisations and individuals. A total of 111 responses had been received from:
The Ormonde Centre;

MS Society;
Members of the West Berkshire Disability Alliance;
Castle School;
Newbury and Thatcham Hard of Hearing Club;
Polio Society;
Clients of the WBC Physical Disabilities Team;
Newbury Day Centre.

10.1 Survey Results

Those replies covered a wide range of disabilities including spinal injury & MS sufferers, those with sight and hearing problems, people who had suffered from brain damage, polio, arthritis, strokes, Spina Bifida and Cerebral Palsy. An analysis of the responses carried out by Mr Hutchins showed that whereas some 15% were wheelchair users, and an equal number used a wheelchair, 27% had sight and hearing impediments and over 30% had walking difficulties. Over 80% of those responding to the survey were users of taxis with an average of 1.3 journeys a week. The survey results showed that whereas 15 respondents (13.5%) who responded required a swivel seat to access a vehicle, over 80% of this total were wheelchair users who would not be inconvenienced if the vehicle were to be fully wheelchair accessible. A high proportion of disabled users (65.8%) reported that driver/companion assistance was required to a greater or lesser extent in accessing a vehicle and 95% of users were of the opinion that Disability Awareness Training for taxis drivers would be advantageous.

10.2 WBDA Report Recommendations

The WBDA's Survey Report on the problems which the disabled have on accessing taxis in West Berkshire, led to the following recommendations being made which were pertinent to the Task Group's Terms of Reference:

- a that the number of saloon cars in the licensed taxi fleet should not fall below 50%;
- b that the number of wheelchair accessible vehicles should increase year on year subject to a 50% ceiling;
- c that drivers should receive Disability Awareness Training.

11. The Taxi Trade

During discussion with trade representatives the Chairman deliberately confined comment and discussion to matters which were directly relevant to the Task Group's Terms of Reference.

11.1 Cabco Limited

Karl O' Hagan and Mr Kevin Archibald, Directors of Cabco, a co-operative taxi organisation operating a mix of 48 saloon cars, estates, MPVs, conventional Black London style cabs and specially adapted vehicles, noted that they regularly carried people with disabilities and those who were movement impaired. As the largest taxi operator in West Berkshire, the firm takes some 16,000 telephone bookings a month and carries in excess of 300,000 people a year. Meetings had been held with the WBDA as the firm's largest group of disabled passengers was the elderly with reduced mobility. Whereas able-bodied passengers could use any type of taxis, the elderly were seen as preferring a saloon type taxi. MPVs were often seen as too high to enter and the conventional London style cab and specially adapted vehicles required passengers to step up and then stoop on entering the

vehicle. The Company were in agreement with the view expressed by the WBDA that there was no single type of vehicle which could fulfil the needs of all those who used taxis in the District. Commenting on vehicle types in a paper which the firm had prepared for the Task Group, Mr Archibald explained that feedback from those who had sight difficulties favoured the use of saloon cars as taxis. However, there was a need to ensure that only the larger family saloons were used in the taxi role as such vehicles made both entry and travel easier for the elderly and those whose mobility was impaired. The saloon car with swivel seat fitted was not a popular option as passengers often complained of discomfort from hitting their heads on the roof both on entering and leaving the vehicle; taller passengers also cited their heads touching the car's roof lining whilst travelling. Whereas MPVs were popular with taxis drivers as many had a factory-fitted swivel seat, it was pointed out that whilst this seat technically met the Council's licensing criteria, it was not designed by the manufacturer to aid entry or exit from the vehicles, but was a leisure facility for family picnicking. Whereas the MPV had an advantage in that it provided seating for more than four people, it was a higher vehicle which often made entry difficult for elderly passengers. It was noted that the London style taxis could seat five, or be used for wheelchair access. Similarly, the Eurotaxi style vehicles could accommodate seven passengers and also be used for wheelchair passengers.

11.2 Recommendations by Cabco Limited

- a Saloon cars should be a sensible size to allow entry by disabled passengers.
- b MPVs should not be considered as suitable for the taxi trade as they are suitable only for able bodied passengers.
- c Wheelchair accessible taxis were not always as accessible as they should be. Further discussion should take place between the trade, WBDA and the Council to draw up a list of suitable, fully wheelchair accessible vehicles.
- d That Driver Disability Awareness training be undertaken as a licence condition to better the service which the trade provides to disabled passengers.

Within the caveat that a diverse fleet of vehicles was needed, these recommendations were fully in keeping with the comments made by WBDA.

11.3 Theale Taxis

Mr Richard Brown and Ian Dunn attended separate discussions with the Task group on 24 February. They noted that in their experience, the predominance of work involving the carriage of wheelchair disable passengers was undertaken by a few specialist proprietors. Whilst fully endorsing the need for Disability Awareness Training and a diverse fleet of vehicles, the Task Group's attention was drawn to the need to ensure that taxis were standard sized family cars - 17 inches /backside was suggested. Mr Brown and Mr Dunn were not in favour of any condition which restricted the issue of new licences solely to wheelchair accessible vehicles. As there were additional costs in providing and operating wheelchair accessible vehicles, it was felt that proprietors ought to be provided with an incentive - for example lower licence fees, the ability to carry advertising, or privileged access to town centre areas. Further, there was a real need to be precise on what was meant by a wheelchair accessible vehicle. It was suggested that a points system on accessibility features should be introduced with conditions laid down for such things as anchorage points.

11.4 The West Berkshire Hackney Carriage & Private Hire Association - Mrs Judy Beales and Mr Rodney Nemeth, Chair and Vice-Chair of the Association

The Association was fully inclusive and could represent the Trade in West Berkshire with confidence. Members (360 drivers) were represented by a 12-strong Committee which held regular meetings.

Questioned on the views of Association members on the present problems being addressed by the Task Group, Mr Nemeth explained that Trade was fully in favour of Disability Awareness Training. A balanced taxi fleet catering for the needs of all passengers in the District was required. There was a need, however, to ensure that vehicles classified as wheelchair accessible were fit for purpose. It expected that the 'grandfather rights' conferred on licences issued before April 2001 would be respected in any new policy. However, Judy Beales asked that such plates be non-transferable until 2021. Those who complied with the present policy and fitted swivel seats were content with the seats and used them. It was generally accepted within the Trade that the issue of new licences at the conclusion of the moratorium would be restricted to wheelchair accessible vehicles.

TASK GROUP DISCUSSION

12. The Carriage of Disabled People in the District's Taxis – Suitability of Vehicles and Driver Training

The Task Group recognised the need for a balanced taxi fleet with a variety of vehicles which were able to provide a good service for both the able-bodied and the disabled in West Berkshire. In this respect there was agreement across both the WBDA and the Trade that a mix of saloon cars and vehicles which were fully accessible to wheelchair users was required. The Trade drew the attention of the Task Group to the need to ensure that wheelchair accessible vehicles were clearly specified and 'fit for purpose'. Further, there was general acceptance that Disability Awareness Training should be introduced for taxi drivers. The Task Group accepted that the range of disabilities was wide and such a training course should cover the comfort of passengers and the style of driving (avoidance of sudden acceleration and braking) together with the specific needs of blind and partially sighted persons, those who are deaf or hearing impaired, those with speech impediments, the needs of wheelchair users and ambulant disabled people, and those with learning difficulties and mental health problems. As the Licensing Authority, the Task Group accepted that the Council had a duty of care to passengers using licensed taxis operating in the District. In this respect, the Task Group fully supported the suggestions made for Disability Awareness Training and was very pleased to hear of the trade's acceptance of such a condition. The Task Group had not had the opportunity to determine whether there was any suitable course currently available in the area. However, it was understood that talks were ongoing between Council Officers and the Ormonde Centre. This matter would require further definition and negotiation and the Task Group accepted that it would not be possible to introduce such a condition immediately. That said, it should be possible to make attendance at such a course a condition of new licence within 12 months. Such training should also be made available to existing drivers so that they could be seen as being 'fit and proper persons' to deliver a public service.

13. Proposed Licence Conditions to Support the Access to Taxis of Disabled People in West Berkshire

The recent application of further parts of the Disability Discrimination Act 1995 will improve disabled access, particularly for wheelchair users, to facilities in the District. This will inevitably lead to the need for a taxi service which has the ability to carry additional wheelchair disabled persons. Currently, there is only limited provision within the taxi fleet to carry wheelchair users. In considering the way forward, to sort out the problems brought about by the earlier policy decision and the subsequent appeal against it, the Task Group recognised that there were basically three groups of taxis proprietors to consider:

- Those holding pre-2000 licenses whose rights were preserved by the 2000 policy decision;

- Those applicants who met the conditions on disabled required by the licence they were granted by providing either fully wheelchair accessible vehicles or by fitting the vehicle with a swivel seat;
- Those applicants who were granted a conditional licence subject to the provision of disabled access but who did not meet that condition either prior to the appeal or subsequently.
- New applicants for licenses.

14. The Task Group recommended that these be agreed by the Licensing Committee and asked that Officers reflect these points in drafting the revised Conditions.

- Firstly, that given the evidence of both need and usage put forward by the WBDA, and the comments from the Trade, there was a proven requirement to provide for disabled access to taxis within West Berkshire.
- That there was a need to balance the requirements of both able-bodied and disabled users in the District, and Members were of the opinion that a mixed fleet of vehicles was required. It would not, therefore, be appropriate, given the rural nature of the District and the diverse needs of disabled users, to propose a policy which called for 100% of vehicles to provide wheelchair access.
- That those holding licences granted before 2000, the group presently not subjected to conditions requiring disabled access, should continue to be free from such conditions subject to any national legislation which might be introduced at a later date. Given that it was likely that this group would continue to operate saloon cars, customers who had a preference for such vehicles on the grounds of comfort, or suitability for their particular disability, would be provided for in the short to medium term future. The Task Group was opposed to any move to enforce provision of disabled access by this group as this could be seen as retrospective legislation and an arbitrary change to licence conditions.
- That applicants who were granted licences subject to disabled access conditions, and who met those conditions by providing either wheelchair access or a swivel seat, should remain subject to those conditions. Whereas the Task Group noted that some customers had expressed concerns about the comfort of vehicles adapted to take swivel seats (particularly taller customers), there was no evidence that the seats were intrinsically unsafe. They provided an aid to some disabled passengers and the Task Group felt that given the need for a balanced and diverse fleet such seats should be retained. To allow removal of the swivel seats would reduce the number of vehicles available for use by the disabled by a significant percentage. This would be contrary to the Council's Corporate Aim of providing fully inclusive services. Where, however, the proprietor felt on a change of vehicle that full wheelchair accessibility rather than swivel seat enhancement should be provided such a change should be allowed.
- Given that there was a need to increase the proportion of vehicles offering access for the disabled within the West Berkshire fleet of taxis, so as to provide an enhanced transport opportunity for the disabled, the Task Group recommended that all new licences should be granted on the condition that vehicles provided full wheelchair accessibility. This would gradually lead over a period of years to a higher proportion of vehicles offering fully disabled access.
- The Task Group considered very carefully what conditions should be applied to those applicants who accepted a licence on the condition that they would provide some form of disabled access - through either full wheelchair accessibility or the installation of a swivel seat

- and who had continued to operate but had failed to meet that condition. Whilst fully accepting the appeal judgement on the totality of Council's policy on disabled taxis access, the Task Group noted that the Stipendiary Magistrate had stated that if the Council had sought to apply a condition based solely on full wheelchair accessibility he would have upheld the Council's right so to do. Accordingly, the Task Group recommend that conditions imposed on applicants who were granted such a licence be enforced and that applicants who had not provided a swivel seat or a fully wheelchair accessible vehicle be required to provide vehicles with full wheelchair accessibility. Given that such licences had now been operative for a number of years, the Task Group felt that it would not be unreasonable to require operatives who had not met the spirit of the licence condition by providing access for the disabled, that they should be required to do so by 1 September 2006.

- g. That Disability Awareness Training be introduced as a Licence condition at the earliest opportunity for all initial taxi driver applications and thereafter on renewal of licences, with Officers being charged with determining the most appropriate training.
- h. That Officers should research vehicle and associated technology with the aim of identifying those factors which should be taken into account to ensure that the West Berkshire taxi fleet is fit for purpose.

02 March 2005

Cllr G S Findlay
Chairman of the Task Group