

These Minutes have been amended.
Please see Minutes of 30 March 2010 for amendments.

LICENSING COMMITTEE

MINUTES OF THE MEETING HELD ON 8TH SEPTEMBER 2009

Councillors Present : Tony Linden (*Chairman*) (P), Peter Argyle (AP), Jeff Beck (P),
Paul Bryant (P), Billy Drummond (AP), Adrian Edwards (P), Geoff Findlay (P),
Manohar Gopal (P), Owen Jeffery (AP), Mollie Lock (P),
Gwen Mason (*Vice-Chairman*) (P), Andrew Rowles (AP), Ieuan Tuck (P),
Quentin Webb (P)

Officers Present: Brian Leahy (Senior Licensing Officer), Sarah Clarke (Senior Solicitor),
Paul Anstey (Environmental Health & Licensing Manager), Valerie Witton (Access Officer),
Jessica Broom (Principal Policy Officer)

PART I

8. APOLOGIES.

Apologies for absence were received by Councillors Andrew Rowles, Owen Jeffery, Peter Argyle and Billy Drummond.

9. MINUTES.

The Minutes of the meeting held on 23 February 2009 were approved as true and correct record and signed by the Chairman, subject to the following amendments:

- (1) A large number of grammatical and spelling errors were picked up throughout the minutes and as such the minutes from the meeting on the 14th May have been amended to correct these errors.
- (2) **Item 7, page 2.** In the first paragraph it should be made clear that the licenses were issued in 2008/09 and not already in place.
- (3) **Item 7, page 3, paragraph 4.** That it be made clear that drug seizures had not been made from door staff but that door staff themselves had made the seizures. Also that staff members had been making reports to the Police not receiving reports from the Police.
- (4) **Item 7, page 4.** Councillor Beck clarified paragraph 7 with the following statement:

On Friday 22 May 2009, a meeting was held in the West Berkshire District Council Offices, located at Faraday Road, Newbury, with West Berkshire Hackney Carriage Association Members' David Oram, Bill Annetts, and Mark Townsend, together with West Berkshire District Council Officers Brian Leahy and Mark Cole, along with Councillor Jeff Beck.

An 'Operational Understanding' was reached with regard to the taxis informal use of the Wharf Road Coach Park and the Museum Wharf Car Park, for taxis waiting prior to joining the 'side by side waiting rank' adjacent to the museum.

10. DECLARATIONS OF INTEREST.

There were no declarations of interest received, however Councillor Beck stated that he had been lobbied on item 4 of the agenda but the Committee agreed this was a similar situation for all Members.

Sarah Clarke stated that she had received a letter from Matt Castle of Dolphin Taxis but that it would have to be disregarded by the Committee due to not having been received within 5 working days of the Committee meeting.

11. HACKNEY CARRIAGE LICENSING

Brian Leahy presented agenda item 4. The purpose of the report was to consider a request from the Taxi Association and others to limit the number of taxis operating in West Berkshire as well as to consider a request from the Taxi Association to abolish the two taxi operating zones. The report covered three key issues that were important in the consideration of any decisions made:

- (1) Delimitation (Capping)
- (2) De-zoning, and
- (3) Disabled access to taxis

Requests had been received from West Berkshire Hackney Carriage and Private Hire Operators Association, Bluebird Cars and CABCO for the Council to consider ways in which new vehicle licences could be refused (capped) or restricted due to the economic downturn and financial problems experienced by the trade.

A submission had also been received from Dolphin Cars, suggesting that capping would be a retrograde step as there was still unmet demand in the district in their opinion.

Key points from the report included:

- In order to prove there was or was not significant unmet demand throughout West Berkshire a thorough survey would need to be undertaken which would need to be contracted out.
- Legally there are 2 taxi zones in West Berkshire, although there was currently a suspension on these and it might now be prudent to abolish these.
- Conditions were put in place following a meeting of the Committee in March 2005 to provide for disabled access to taxis, however, although the numbers of accessible vehicles had increased and the situation improved, in meetings with the trade association and disability access groups, it was clear that conditions might not be robust enough to ensure equality for all.

In response to questions from Councillors Webb and Findlay, Sarah Clarke clarified that the Council would be able to abolish the 2 operating zones due to a recent statutory instrument; however it would need to introduce new byelaws in order to do so – it would not be possible to simply attach conditions to the current byelaws.

The current byelaws were signed off in 1992 and might now need changing. Current byelaws would therefore need to be abolished before the introduction of new ones.

Currently the Council would still need to obtain the Secretary of State's approval to create new byelaws. These would need to be provisionally approved, then go out to consultation and then gain final approval from the Secretary of State, all of which would take approximately 6 months.

In response to further questions from Councillors Webb and Findlay, Brian Leahy confirmed that a general road worthiness test was carried out on vehicles prior to licensing with further checks being required twice per year for vehicles between 6 and 8 years of age and three times a year for vehicles over 8 years old. Road stops were also carried out with the Police.

Whether or not the cinema would have an affect in terms of increasing taxi use was yet to be determined and extra spaces had been provided outside of the cinema – it had been determined in consultation with the planning department and the contractors that 5 spaces would be appropriate. Currently there were 17 official taxi spaces in Newbury.

Valerie Witton addressed the committee to explain that she would offer disability awareness training to all drivers on a rolling basis and would want this to be a condition of licensing. Brian Leahy stated that he had held a meeting with the Association on this topic and it was welcomed however it was not a condition that could be put on an actual license. It was suggested that this was put into a separate paper to be brought back to the committee at a later date as it was not on the agenda for the current meeting.

Members took a vote to suspend Standing Orders in accordance with paragraph 7.6.2 final bullet point of the Constitution to allow members of the public to speak in accordance with paragraph 7.12.4 of the Constitution.

Kevin Archibald, Operations Manager at CABCO addressed the Committee regarding the letter that was submitted as Appendix C in the agenda. The current economic climate and the town centre works for the new cinema had put a strain on the incomes of those in the trade. The costs of carrying out a survey would come back to the trade and he suspected that a further survey would need to be carried out in a few years' time when the economic climate had changed again and an increase in numbers was needed. It was believed that the way forward would be to look at tightening the conditions to enter into the trade thus managing the numbers entering into the trade. Some vehicles were not in good condition yet passed the current test. These higher standards would attract people to using taxis and be a benefit in general to the area. CABCO would also support holding a moratorium on licenses until the new legislation had been received from government later this year.

In response to questions from Councillors Linden, Beck and Bryant and Brian Leahy, Kevin Archibald clarified the following points:

- CABCO currently held 58 vehicles;
- That CABCO agreed that the correct action to take was in accordance with paragraphs 3.32, 3.33 and 3.34 of the report;
- That CABCO believed it was fairly common for councils to require, as stated in paragraph 3.3.2 of the report, that 1st time applicants provide a brand new wheelchair vehicle;
- That CABCO had high standards and did not want to see a two-tiered system in West Berkshire or a lowering of the start up level which would demean the taxi trade, as there were always start up costs with any business.
- A third of CABCO fleet had disabled access.

Brian Leahy, in clarification, explained that the majority of the CABCO fleet were saloon cars which were not required to have disabled access. Members had set the standard of disabled accessibility for all new taxis and the cost of a black cab type taxi could cost as much as £30k. The non-black cab custom manufactured taxis were also reasonably expensive at new. It was appropriate to have a mixed fleet, however this would mean that there would not be a level playing field for those wanting to enter the trade. If it was the intention of the Committee to look into

capping by way of condition of new vehicles, it would be necessary to also look at the condition of current vehicle that might not be compliant.

Regarding van conversions, Brian Leahy explained that they did not accept 'home made' conversions and that a certificate of proper conversion was required. Many vehicles had been refused for non-compliance with the standard. The Council would not licence any vehicle which was considered to be unsafe or which was not professionally converted for disabled access.

Councillor Findlay commented that this was not the inference that had come across in a recent Kick FM interview and that he was concerned that they would be seen to be capping from a 'back door route'.

Richard Brown, Vice-Chairman of West Berkshire Hackney Carriage and Private Hire Operators Association addressed the Committee regarding the letter that was submitted as Appendix A in the agenda. There were currently very cheap ways of entering into the trade and he did not consider that this was conducive to the provision of a quality service in Newbury. The Association was in favour of undertaking a survey as detailed in 11.3 of the report as well as to go ahead with the abolition of the 2 zones as outlined in 11.5.

Sarah Clarke clarified with Richard Brown that the Association was not in favour of brand new vehicles only as CABCO had stated at their recent Committee meeting. The Committee had agreed on vehicles of up to 3 years of age at a cost of around £12-16K.

In response to questions from Councillor Bryant, Richard Brown explained that a cheap way of entering into the trade could include the conversion of a van with disabled access that was not of high standard. Brian Leahy confirmed that this would be the Fiat Diablo vans which were factory converted to take wheelchairs in the back via rear-loading. The Access Officer, Valerie Witton did have some issues with these vans and this could be a consideration to include in any survey that was carried out as stated in 11.3 of the report. Councillor Bryant stated that he considered the costs of entering into the trade and the standards of vehicles to be two separate issues.

Richard Brown confirmed that the Association wanted further consultation to be carried out before any decision was made.

Brian Leahy informed the Committee that they had a number of options to consider and they might wish to form a working party to do so. The Department for Transport paper due in November was expected to lay down standards some of which might be mandatory and some optional.

Sarah Clarke stated that the Committee might want to review the byelaws and could then impose Disability Discrimination Act training with appropriate byelaws and conditions. A timetable for doing so with proposals for new byelaws could be brought back to a meeting of the Committee. More detail would be needed regarding the abolishing of the 2 zones.

In response to a question from Councillor Linden, Richard Brown confirmed that the Association currently represented 24 members.

Members took a vote to re-introduce Standing Orders in accordance with paragraph 7.6.2 final bullet point of the Constitution.

Councillor Findlay proposed that the Committee undertake the consultation, take the necessary legal advice and abolish the zoning, create new byelaws and then remove the existing byelaws.

Sarah Clarke clarified that the disabled access conditions were a separate issue to the zoning and byelaws and would be dealt with by different procedures. Brian Leahy added that byelaws were the only controlling influence the Council had over taxi drivers. The need for DDA training could be introduced when the new byelaws were put forward.

Councillor Webb clarified that what Councillor Findlay had proposed took into account paragraphs 3.3.2, 3.3.3 and 3.3.4 of the report.

Sarah Clarke added that the proposal was to consult on all three matters of capping, zoning and disabled access.

Councillor Lock agreed that a full consultation was required in order to reach all those affected by the decisions.

Members voted in agreement of forming a working party of 5 Members with officer support and advice in order to take the consultation forward.

Resolved that:

A working party including Councillors Linden, Mason, Findlay, Beck and Tuck would form to take forward a full consultation on the three issues of capping, zoning and disabled access.

12. PRIVATE HIRE LICENSING – OPERATOR’S LICENCES

Brian Leahy presented agenda item 5. The purpose of the report was to consider only issuing private hire operator’s licences to persons/companies who operate from a base in West Berkshire.

Currently all the existing private hire operator licences, with one exception, were issued to persons or companies whose address lay within West Berkshire. The one exception related to a business which was forced through a compulsory purchase order to relocate to a base approximately 500 metres within the Reading borough.

Licensing officers had found that where an operating base was outside the enforcement jurisdiction of this council it was difficult to determine which of their records were pertinent to West Berkshire.

In response to questions from Councillors Edwards and Webb, Brian Leahy confirmed that an application for a licence from someone living in Highclere would not be accepted and that it was illegal to move premises to outside the West Berkshire area without a valid licence to operate private hire.

In response to a question from Councillor Findlay, Sarah Clarke confirmed that a new regulation could be agreed from a particular date.

Councillor Beck stated that he did not think that exceptions should be allowed and that the operator in question should be advised of the situation and at renewal of their license they should be located within West Berkshire. Sarah Clarke stated that this would not be the case as this was a new regulation but all new applicants would be required to abide by this.

Kevin Archibald and Richard Brown were in agreement with the recommendation in the report.

Resolved that:

The recommendation in the report be accepted on condition that the condition would apply from 8th September 2009.

13. PRIVATE HIRE LICENSING – CRB CHECKING

Brian Leahy presented agenda item 6. The purpose of the report was to consider the introduction of Criminal Record Checks (CRB's) for private hire operators.

The Local Government (Miscellaneous Provisions) Act 1976 requires that all applicants for a private hire operator's licence had to be deemed to be 'fit and proper'.

Currently in West Berkshire, applicants for a private hire driver's licence are checked by the Criminal Records Bureau but those persons applying for an operator's licence and their staff are not. Many councils have taken the view that as the operator is the person taking the booking and they could be party to sensitive information such as bookings taken for holidays, they should be subject to CRB checks as well.

Councillor Findlay enquired as to the situation regarding operators of Hackney Carriages. Brian Leahy explained that Hackney Carriages do not require an operator and are therefore were not within the scope of this recommendation. Private hire vehicles must, by law, take bookings.

Councillor Edwards stated that he believed that just because a person had a conviction this should prohibit him/her from getting a job. He wondered where the Council would stand should a person appeal and be successful. He believed that this was excessive and stated that many other staff would also have information on when people were away on holidays, such as Viola staff. Also, what was the case when a foreign national had a conviction?

In response Sarah Clarke stated that a set of standards could be put in place which would determine the relevance of a conviction, for example, a conviction of theft could be deemed relevant but one of speeding, not. It was only possible to regulate what was legally allowed and as Hackney Carriages did not have operators, it would not be possible to regulate on this matter.

Brian Leahy explained that there were also provisions in place to enable checking of foreign nationals and that this had been done, for example, with regard to a person who originated from a small village in Pakistan. EU members could also be CRB checked. It was not possible to refuse a licence for a driver unless they were deemed not to be 'fit and proper' and he believed that this should also be the case for operators.

In response to a question from Councillor Bryant, Brian Leahy explained that booking sheets that Hackney Carriage operators use were not within the remit of licensing. Richard Brown stated that this was covered by data protection and that it would not be possible to obtain this information from their operators.

Members took a vote to suspend Standing Orders in accordance with paragraph 7.6.2 final bullet point of the Constitution to allow members of the public to speak in accordance with paragraph 7.12.4 of the Constitution.

A member of the taxi trade, Mr Cox, stated that if the regulation did not include all taxi companies then there was little point in the regulation as all companies had access to this type of information.

Kevin Archibald stated that taxis used for private hire journeys did take bookings as well. His company did also have Hackney Carriages but employees did have strict

LICENSING COMMITTEE – 8 SEPTEMBER 2009 – MINUTES

conditions of employment and the Data Protection Act did offer confidentiality of this information. He was of the opinion that CRB checking was a step too far.

Richard Brown stated that he agreed with CRB checking but that Hackney Carriage hire should be included and should cover any employee handling personal information, which did also include credit card details.

Brian Leahy stated that these were all valid points and he did not dispute anything that had been said, however it was not possible for them to change the law. There was no provision under Hackney Carriage legislation to make this regulation apply. Sarah Clarke stated that she felt this was still an appropriate test to move forward with and Brian Leahy confirmed that the majority of other local authorities did extend CRB checks to operators. He had not found one local authority from a check of 30-40 that did not perform these checks.

Councillor Beck asked whether this could be done on a voluntary basis and Sarah Clarke responded that this would be difficult to then enforce.

Members took a vote to re-introduce Standing Orders in accordance with paragraph 7.6.2 final bullet point of the Constitution.

Councillor Beck proposed to go ahead with the recommendations in the report and Members voted in favour of doing so with 1 Member voting against the proposal and 1 Member abstaining.

Resolved that:

The CRB checking of private hire operators be approved.

(The meeting commenced at 6.30 p.m. and closed at 8.40 p.m.)

CHAIRMAN

Date of Signature: