

<b>Body:</b>	<b>General Licensing Committee</b>
<b>Date:</b>	<b>23<sup>rd</sup> January 2007</b>
<b>Subject:</b>	<b>Consideration and Allocation of New Hackney Carriage Licences</b>
<b>Report of:</b>	<b>Kareen Plympton, Licensing Manager</b>
Ward(s)	All
Purpose	To consider the mechanism for hackney carriage proprietor licence allocation, following the decision in December 2006 to release a further 6.
Contact:	Kareen Plympton, Licensing Manager, Telephone 01323 415937 or internally on extension 5937 E-mail address kareen.plympton@Eastbourne.gov.uk
Recommendation	To consider and agree the mechanism by which hackney carriage proprietors licences are allocated. Furthermore, agree to allocate such accordingly, subject to the terms and conditions agreed on the 1 <sup>st</sup> December 2006.

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## **1. Introduction**

1.1 On the 1<sup>st</sup> December 2006, the Full Licensing Committee met to consider the results of an unmet demand survey in respect of hackney carriages in the Borough.

1.2 Following the outcome of the results, the Committee agreed to release 6 hackney carriage proprietor licences into the arena, the first since 1976. Licence release it was determined, would be subject to the following terms and conditions:

- A licence will only be released and approved for use at all times by a wheelchair accessible vehicle only of a type which meets European Union Whole vehicle type approval
- A licence will only be released and approved for use by a vehicle which is white in colour, and is deemed fit for purpose, passes the relevant vehicle standard test and accords with the Councils Vehicle Conditions and bylaws.
- A licence shall not be issued to a person\* who is currently licensed as a hackney carriage proprietor in the Borough

\* NB. Within the context of the law, a person is defined as an individual and/or a Company.

- The vehicle to which the licence applies shall only be used by a Driver who is currently licensed by Eastbourne Borough Council
- The vehicle plate/licence shall not be sold, transferred or otherwise disposed of for a period of 1 year from the date of issue.

- To ensure that licences are obtained in a timely fashion, successful applicants must complete the licensing procedure within 3 months of the date of being allocated a licence/plate. The issue offer will be withdrawn if the required licensing procedure is not completed within that period.
- 1.3 In addition, the Committee agreed that the Scrutiny Panel of the Council should form a working group to consider the issue of taxi rank provision in the Borough. Furthermore, it was proposed and agreed at the Council meeting held on 22 November 2006 that consideration be given to the inclusion of two further conditions as follows:
- Any licence issued shall revert to Eastbourne Borough Council when the hackney carriage user ceases to practice as a hackney carriage driver.
  - Eastbourne Borough Council officers shall explore the methods by which such licences are to be released in order to maximise the financial return to Eastbourne Borough Council.
- 1.4 The Licensing Manager has investigated the legality of the above and, whilst the option of returning the hackney carriage licence/plate is open to individuals, Section 49 of the Local Government (Miscellaneous Provisions) Act 1976 also permits a plate/licence to be transferred between parties. R v Weymouth Borough Council ex pa Teletax Weymouth Ltd 1947 refers.
- 1.5 In respect of income generation, under Section 70 (1) of the 1976 Act, fees can be set by the Authority, limited to cost recovery only. As such, no "profit" can be made. R v Manchester City Council ex parte King, 1991 and R (app Davies v Crawley Borough Council 2001 refer.

## **2.0 Expressions of Interest**

- 2.1 When the Full Committee last released further hackney carriage licences in 1976, there were a number of terms and conditions attached in relation to release. This included the provision of an annually maintained an "expressions of interest" list.
- 2.2 Upon examination, it is apparent that the maintenance of this list has been sporadic since its creation in 1976. Following the Committee decision in December 2006, the list was examined, and where the full details of an individual had been recorded, a letter was sent confirming that they still wished to be included in the "expressions of interest" list. A copy of this letter is included in Appendix 1.
- 2.3 The currency of the list is questionable, and in order to ensure that any party wishing to be considered for a licence is afforded the opportunity to make an application, an advertisement was placed in the Evening Herald the week commencing the 8<sup>th</sup> January 2007. A copy of the advertisement is included at Appendix 2.
- 2.4 The same information, including the terms and conditions surrounding licence release was made available via the Councils website at [www.eastbourne.gov.uk/licensing](http://www.eastbourne.gov.uk/licensing).
- 2.5 It is recognised by the Licensing Team that the allocation of licences is complex, and extensive research has been undertaken by the Team with other

Authorities regarding the mechanisms used to allocate any new hackney carriage licences. Legal advice has also been sought from James T. H Button, Solicitor specialising in matters relating to hackney carriage and private hire matters.

2.6 Research has shown that a variety of mechanisms are employed when allocating new hackney carriage proprietors licences including:

- licences being allocated using a points based system. This option is resource intensive, complex and open to legal challenge, since the mechanism used to allocate points is largely subjective.
- Details of all parties expressing an interest in the licence allocation are included in an "in house" draw, undertaken within the context of a Licensing Committee. The names are placed in a "hat," then drawn, and licences awarded subject to the terms and conditions outlined above.

2.7 The Licensing Team has also received expressions of interest from a established Companies in the Borough. Within the terms of the law, a limited Company can be treated as an individual, since it can own a hackney carriage vehicle, and thereby a plate/licence. It is recommended that if the Committee decides that it is appropriate for a Company to be included in the expressions of interest, then the details will be included in the same manner as an individual applicant.

2.8 The Company will need to produce the Company Incorporation Certificate, authorisations, photographs of signatories, and up to date account registered with Companies House. The Company will also need to be deemed "fit and proper."

2.9 In respect of the above processes, the Committee are strongly recommended to allocate licences by means of a draw, since this enables all parties equality of opportunity, is more transparent and is less open to legal challenge.

### **3.0 Human Resource & Financial Implications**

3.1 The cost of administering the Taxi & Private Hire Licensing function is fully recovered via the licence fee income.

### **4.0 Human Rights Act 1998 - Implications**

4.1 The provisions of the Human Rights Act, 1998, must be borne in mind by the Committee when taking licensing decisions under the Licensing Act, 2003. Particular regard should be had to Article 1 of the First Protocol, which relates to the protection of property and the peaceful enjoyment of possessions and property. Article 8 - which relates to the right to respect for private and family life, home and correspondence - should also be borne in mind. While the Human Rights Act makes it unlawful for a local authority to act or to fail to act in a way that is incompatible with a Convention right, Article 1 of the First Protocol and Article 8 are both qualified rights which means that interference - to a justifiable extent - may be permitted as long as what is done:

- Has a basis in law;
- Is intended to pursue a legitimate purpose

- Is necessary and proportionate; and
- Is not discriminatory.

## **5.0 Recommendations**

- 5.1 The Committee is asked to consider and agree the mechanism by which hackney carriage proprietors licences are allocated. Furthermore, agree to allocate such accordingly, subject to the terms and conditions agreed on the 1<sup>st</sup> December 2006.

## **Background Papers**

- Local Government (Miscellaneous Provisions) Act 1976
- Town Police Clauses Act 1847
- Taxis, Licensing Law and Practice, James T.H Button