
Subject:	HACKNEY CARRIAGE NUMBERS – UNMET DEMAND SURVEY
Meeting and Date:	Cabinet – 5 June 2023
Report of:	Louise May, Strategic Director (Corporate and Regulatory)
Portfolio Holder:	Councillor Jamie Pout, Portfolio Holder for Transport, Licensing and Regulatory Services
Decision Type:	Key Decision
Classification:	Unrestricted

Purpose of the report:	To consider the report of LVSA (Licensed Vehicle Surveys & Assessment) in respect of the Unmet Demand Survey.
Recommendation:	That Cabinet resolves to issue an additional 5 Hackney Carriage Licences to wheelchair-accessible vehicles.

1. Summary

- 1.1 In accordance with the provisions of the Town & Police Clauses Act 1847, as amended by the Transport Act 1985, Dover District Council currently limits the number of Hackney Carriage licences to 69.
- 1.2 Limitation of Hackney Carriage numbers is only permitted where the Licensing Authority is satisfied that there is no significant unmet demand in its area.
- 1.3 The Department of Transport published guidance in 2010 which advises that licensing authorities may continue to choose to limit the number of Hackney Carriage licences, provided that, in order to justify the imposition of quantity restrictions, they conduct an unmet demand survey at least every three years to assess any significant unmet demand.
- 1.4 That survey has now been carried out which identifies an unmet demand in the Dover District. A decision is now required in respect of the limit number.

2 Introduction and Background

- 1.5 Hackney Carriages are permitted to 'ply for hire' as well as taking bookings. As such they can be 'flagged down' by customers and may also use the Hackney Carriage ranks in the district. Private Hire vehicles must be pre-booked and are not permitted to ply for hire, or to wait at hackney carriage ranks for fares.
- 1.6 Under the Town Police Clauses Act 1847, a licensing authority had an unfettered discretion to limit the number of Hackney Carriage licences as it thought fit. It was a power, which was widely used by many authorities, to restrict the numbers of Hackney Carriages for the purpose of exercising control and supervision over them. Under the Transport Act 1985, the position in law changed and the 1847 Act, as now amended by Section 16, provides as follows:

“the grant of a licence may be refused for purposes of limiting the number of hackney carriages..., if but only if, the person authorised to grant a licence is

satisfied that there is no significant demand for the services of hackney carriages... which is unmet”.

- 2.3 Related Public Health legislation also provides a procedure whereby unsuccessful applicants for Hackney Carriage licences may appeal directly to the Crown Court. The Authority would then need to demonstrate that it is satisfied that no significant unmet demand exists. If the Authority fails to meet this requirement, the appeal against the refusal to issue a licence will be successful.
- 2.4 Prior to the recent survey carried out in 2022, Dover District Council last commissioned an unmet demand survey in 2017. The next survey was due to be carried out in 2020, but had to be delayed due to the impact the coronavirus pandemic was having on the local economy at the time, as this would not have been a fair or accurate assessment of the demand.
- 2.5 The Council has engaged consultants to carry out an unmet demand survey in order to ascertain if the Hackney Carriage provision within the District is sufficient. The survey has now been completed and a copy of it can be seen at **Appendix A**. The conclusion of the report shows that there is a significant unmet demand for Hackney Carriages in the district.

Survey

- 2.6 Data was collected through consultation with key stakeholders, the trade and members of the public. In addition, observations of activity at taxi ranks were undertaken to record volumes of Hackney Carriages and passengers using each rank and whether any passengers had to wait for Hackney Carriages to arrive at the ranks. Of the 733 passengers observed boarding Hackney Carriages during the period, 248 passengers had to wait at the rank for a Hackney Carriage to arrive. When the last survey was carried out in 2017, 1,779 passengers were observed and only 69 passengers had to wait at the rank for a Hackney Carriage to arrive.
- 2.7 The report says that with regard to vehicle condition, availability, driver professionalism, knowledge and appearance, public and stakeholder perception of the Hackney Carriage fleet was favourable. However, there was evident discontent amongst public and stakeholder respondents with the level of availability of licensed vehicles in general.
- 2.8 In addition to the limited availability of licensed vehicles perceived by stakeholders and the public, a particular issue was identified regarding the availability of wheelchair-accessible licensed vehicles. The number of wheelchair accessible Hackney Carriages and wheelchair accessible Private Hire vehicles licensed by Dover District Council has declined in recent years. In 2013, there were 26 wheelchair-accessible licensed vehicles, and by 2022 the number of wheelchair-accessible vehicles had dropped to 8, of which only 2 are Hackney Carriages.
- 2.9 The number of licensed vehicle drivers has dropped since pre-Covid times. Also, the number of Private Hire vehicles licensed in Dover District has dropped since pre-Covid times. As demand for licensed vehicles has recovered from the impact of Covid-19 mitigation measures, the level of supply has not kept pace. Consequently, the number of rank hires observed has dropped significantly and the level of latent demand is indicative of people who would like to hire Hackney Carriages from ranks but cannot because not enough are available.

- 2.10 In order to reduce the level of unmet demand, additional licensed vehicle capacity would need to become available. The report states (page 5 of 65): *Hackney carriages and private hire vehicles are operated as independent businesses and the Council cannot exert direct influence on where and when licensed vehicles are operated. The Council can control the maximum fares tariff for hackney carriages and the number of hackney carriages licensed. Therefore changes to the limit on the number of hackney carriages licensed and/or the taxi fares tariff could be considered, if it was felt that such measures could increase the level of availability of licensed vehicles.*
- 2.11 It should be noted that the Hackney Carriage tariff at Dover District Council was increased in 2022, and prior to that there was another increase in 2021. The national average 2-mile Hackney Carriage fare at tariff one is £7.04. The average 2-mile Hackney Carriage fare at tariff one in the Dover District is £7.10.
- 2.12 It is necessary for Cabinet to determine whether to delimit the number of Hackney Carriage licences issued by this authority or to retain a limit on numbers. If the latter is determined the Authority may retain the current limit on numbers or may set a new limit based on the evidence contained within the survey report.
- 2.13 The report carried out by LVSA suggests that in order to ensure that there is no unmet demand within the Dover District, the number of Hackney Carriages would need to be increased by 5 (Page 7 of 65 of the report, paragraph 4).

3. Considerations

Delimitation

- 3.1 One of the difficulties associated with delimitation is that there are a limited number of ranks available for use in the district, currently just 23 spaces are provided for a total of 69 Hackney Carriages. Dover Town is in a slightly better position than most areas of the district given the additional, concessionary ranks provided at Dover Priory Station, the Eastern Docks, and the Western Docks Cruise Terminal. Any delimitation of Hackney Carriage vehicle licences would undoubtedly result in an exponential increase in Hackney Carriage licence applications resulting in an unsustainable demand for rank space.
- 3.2 In most places where quantity restrictions are imposed, vehicle licences command a premium, often in tens of thousands of pounds; this is the case in the Dover District. This indicates that there are people who want to enter the Hackney Carriage market and provide a service to the public, but who are being prevented from doing so by the quantity restrictions. There was a waiting list held by Dover District Council for those who were interested in obtaining a Hackney Carriage licence but it was too long and as there was no movement on it, the list was abolished some years ago, as Hackney Carriage plates that are no longer required are sold with the car and transferred to a new owner. There is no provision within the legislation to prevent the transfer of licences in this way. We are told that licences have transferred for up to £30k. The council/tax-payer does not receive any of this money other than the 'cost recovery' fee to administer the transfer. Removing the limit on the number of licences we issue would remove the inflated 'market value', but it would also have significant consequences for anyone who has 'invested' in a licence. They would almost certainly lose the value of their investment immediately. That said, loss of investment is not a reason for withholding more licences. The only legal reason to refuse a Hackney Carriage vehicle licence is because there is no significant demand which is unmet.

- 3.3 Delimitation would, however, benefit Private Hire Vehicle drivers as they could apply for a Hackney Carriage Licence which would enable them to ply for hire and wait on the ranks, potentially increasing their business. It could also be argued that delimitation would have a positive effect on the service provided to the public, as people would potentially be able to 'flag down' an increased number of Hackney Carriage vehicles in the district.

Wheelchair-Accessible Licensed Vehicles

- 3.4 The lack of wheelchair-accessible licensed vehicles is a significant problem for wheelchair bound residents of the District. Perceived cuts to bus services and hospital transport services, coupled with the reduced number of wheelchair-accessible vehicles available, has increased problems experienced with travel. The issue has been further exacerbated since Covid, with the general reduction in licensed vehicles capacity, associated with reduced driver numbers.
- 3.5 There are currently only 2 wheelchair accessible Hackney Carriage vehicles within the Dover District. There are a further 6 more such vehicles licensed as Private Hire vehicles. If additional Hackney Carriage licences are issued, it would be appropriate to stipulate that these must be wheelchair-accessible vehicles and that they must remain so if the vehicle is transferred in the future.

Legislation and Framework

- 3.6 The licensing of Hackney Carriages, as opposed to Private Hire vehicles, falls within the provisions of the Town Police Clauses Act 1847 as amended. Section 37 of this act states:

“ A local authority may from time to time licence to ply for hire within the prescribed distance, or if no distance is prescribed within five miles from the General Post Office of the city town or place to which the special act refers (which in that case shall be deemed the prescribed distance,) hackney coaches or carriages of any kind or description adapted to the carriage of persons”

Section 171, Public Health Act 1875 amended the legislation to align the “prescribed distance” with the local authority administrative area

Section 16, Transport Act 1985 provides that a local authority may only limit the numbers of hackney carriages if they are satisfied that there is “no significant unmet demand”

The situation was further clarified following the judgement in R (on application of Maud) v Castle Point Borough Council, 2002 where it was held:

- a) Before a local authority can refuse an application for a vehicle licence in order to limit the number of licensed taxis, they must be satisfied there is no significant demand for the services of taxis, within the area to which the licence would apply, which is unmet,
- b) If the local authority are thus satisfied, a discretion, as opposed to an obligation, arises to refuse the grant of a licence; but
- c) If the local authority is not so satisfied, they cannot refuse to grant a licence for the purpose of limiting the number of licensed hackney carriages and are thus obliged to grant it.

- 3.7 Cabinet will no doubt be aware that some previous decisions in relation to limit of Hackney Carriages had been made by full Council. Since this time, there has been a very significant decision in the Court of Appeal in relation to the discharge of local authority functions. In the case of *R. (on the application of 007 Stratford Taxis Ltd) –v- Stratford on Avon DC [2011] EWCA Civ.160* the Court adopted a very restrictive view of the interpretation of the Local Authorities (Functions & Responsibilities) (England) Regulations 2000. The effect of this decision is that some decisions which had previously been widely regarded as being decisions to the ‘council side’ of the authority must now be discharged by the executive – even though they appear to underpin regulatory functions.

4 Identification of Options

- 4.1 To consider the unmet demand report prepared by LVSA, and agree an increase in the number of Hackney Carriage Vehicle Licences by five (5), with a requirement that any additional Hackney Carriage plates must be issued to wheelchair-accessible vehicles, and that any subsequent transfers must be to wheelchair-accessible vehicles only. **This is the preferred option.**
- 4.2 To consider the unmet demand report prepared by LVSA and agree an alternative increase in the number of Hackney Carriage Vehicle Licences.
- 4.3 To consider the unmet demand report prepared by LVSA and agree to **remove** the existing limit on Hackney Carriage Vehicle Licences. This option would require a further period of consultation with the trade.
- 4.4 To consider the unmet demand report prepared by LVSA and agree to retain the current limit on Hackney Carriage Vehicle Licences.

5 Evaluation of Options

- 5.1 The option at 4.1 is the preferred option. There is a shortage of wheelchair-accessible vehicles in general across the Dover District, and increasing the number of Hackney Carriage Vehicle Licences with a stipulation that these must be wheelchair-accessible vehicles will help to alleviate the problem. A decision which goes against the recommendations of the report of the results could lead to a Judicial Review from the Taxi trade.
- 5.2 If the decision is taken to issue more Hackney Carriage licences within the Dover District, it is very likely that more than 5 applications will be made and therefore it may be necessary to allocate the available licences by ballot to those applicants meeting the Council’s application criteria. The Council wishes to avoid any discrimination in favour of, or against, any group. Because of the limited number of licences available, the Council will not consider multiple applications by an individual or applications made on behalf of third parties. A public ballot for new licences would then be held in the Council Chamber, with an additional 5 applicants put onto a reserve list should any of the first 5 applicants determined be unable to meet the criteria for the grant of a licence or withdraw for any reason. Applicants will be advised that they must not proceed with acquiring a vehicle until the process is completed.
- 5.3 Consideration has been given to alternative options to the ballot, in particular as a way to encourage more electric vehicles onto the fleet, to drive forward the Council’s climate change agenda. An alternative option of a scoring system was considered but it is felt that this could preclude those who are unable to afford electric wheelchair-accessible vehicles. This will be reviewed as the electric charging infrastructure develops across the district and the cost of electric vehicles comes down.
- 5.4 The remaining options at 4.2 – 4.4 are not recommended for the reasons set out earlier in this report.

6 **Resource Implications**

- 6.1 There are no resource implications. The cost of the survey is met by the Hackney Carriage trade over a 3-year period as part of the Hackney Carriage licence fee.

7 **Corporate Implications**

- 7.1 Comment from the Section 151 Officer: 'Accountancy has been consulted on the report and have no further comments to add. (MR)'
- 7.2 Comment from the Solicitor to the Council: The Principal Lawyer – Litigation and Regulatory has been consulted during the preparation of this report and has no further comment to make.
- 7.3 Comment from the Equalities Officer: 'This report of the Licensed Vehicle Surveys & Assessment in respect of the Unmet Demand Survey highlights the lack of wheelchair accessible vehicles in the Dover district. It proposes an increase in Hackney Carriage Vehicle Licences with the stipulation that these must be wheelchair accessible vehicles to help mitigate the negative impact for those with a protected characteristic. In discharging their duties members are required to comply with the public sector equality duty as set out in Section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/section/149>'

8. **Appendices**

Appendix A – Copy of the LVSA Unmet Demand Survey dated April 2023

9. **Background Papers**

The Office of Fair Trading Report 2003
Department of Transport Best Practice Guidance 2010

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