

## Overview and Scrutiny Committee

29 November 2016



<b>Title</b>	Review of Taxi Licensing		
<b>Purpose of the report</b>	To note		
<b>Report Author</b>	Dawn Morrison		
<b>Cabinet Member</b>	Councillor Tony Mitchell	<b>Confidential</b>	No
<b>Corporate Priority</b>	Value for money Council		
<b>Cabinet Values</b>	Community		
<b>Recommendations</b>	<b>To note the report</b>		

### 1. Report aims and process

- 1.1 The Overview and Scrutiny Committee has asked to review the Council's Taxi Licensing Policy, with particular regard to the provision of taxi ranks, whether the economic needs of the Borough are adequately served by the present regime and whether the fees charged represent value for money.
- 1.2 The current draft policy is contained at **Appendix 1**
- 1.3 To assist this review, all currently licensed drivers and operators (around 200) were sent a letter on 1 September 2016, attached as **Appendix 2**
- 1.4 Five responses were received, attached as **Appendix 3**
- 1.5 Spelthorne Business Forum and the Staines-upon-Thames BID were approached by email on 23 August 2016. No responses were received. It should be noted that retail businesses have, in the past, objected to rank spaces being put in and been instrumental in having them removed through lack of use citing that they would prefer parking spaces for their customers.
- 1.6 An officer from Surrey County Council and from Surrey Police (Road Safety) were invited to attend the meeting but declined. Their responses to the invite are contained at **Appendix 4**
- 1.7 Although not part of the original remit of this review, Cllr Davis suggested that the report include impending changes to the law and policy, which are therefore outlined below.

### General

- 1.8 It should be stressed at the outset that officers recognise that working as a hackney carriage or private hire driver can be extremely challenging. Drivers often work long, unsocial hours, and at times have to deal with aggressive,

unreasonable, drunken or abusive customers when their own safety could be at risk. We are living in times where people are finding it difficult to make ends meet, the night-time economy has changed beyond recognition in a relatively short space of time, and there are threats as well as opportunities to “traditional” taxi and private hire businesses due to advances in technology.

- 1.9 We must also acknowledge that the most vulnerable in our society rely on the valuable, and in some instances essential, services the taxi and private hire trade provide.

## **2. Background**

- 2.1 Spelthorne BC first became responsible for licensing the taxi and private hire trade in 2000, when boundary changes meant that the Borough became part of the Surrey Police area when it previously came under the Metropolitan Police. This change meant that licences were no longer issued by the Public Carriage Office (now TFL).
- 2.2 The London private hire trade was unregulated for much longer than the taxi trade or PHVs outside London. The law changed in 1998 and licensing was gradually introduced to this sector over the following six years.
- 2.3 This means that, prior to the boundary changes, the private hire trade in Spelthorne was unregulated. Perhaps understandably, there was resistance at the outset from the private hire trade, who could not see the benefits to them of being licensed. To a certain extent this attitude to licensing prevails to this day, as some drivers and operators in Spelthorne have been in the trade for many years.
- 2.4 The Licensing Team was formed in 2005 with the implementation of the Licensing Act 2003 which transferred the responsibility of alcohol licensing from the law courts to local authorities. The team currently comprises of half of a full time equivalent (FTE) Licensing Manager, two FTE Licensing Officers, and a Licensing/EH Support Officer resource of 13 hours a week.
- 2.5 As well as licensing the taxi and private hire trade, (192 licences) the team has responsibility for issuing, amending and enforcing licences and registrations under the Licensing Act 2003, (around 300 licences), Gambling Act 2005, (20 premises, 51 permits, 70 small lottery registrations). The team also deals with Scrap Metal Dealers (21 licences) charity street and house-to-house collections (around 50 per year), and street trading consents. In all the team deals with between 900 and 1,000 applications per year, between 40 and 50 complaints, with proactive licensing and enforcement visits comprising around 80 visits per year. The team also takes part in regular joint enforcement initiatives alongside partners, including Surrey Police and Heathrow Police.
- 2.6 There have been staff shortages in the past year (there was a Support Officer vacancy from October to December 2015 and a Licensing Officer vacancy from January to April 2016).

## **Hackney Carriage and Private Hire Licensing Governance and Enforcement**

- 2.7 The legal framework governing the licensing of taxis is contained in various pieces of legislation. Principally, Town Police Clauses Act 1847, Transport Act 1985, and the Local Government (Miscellaneous Provisions) Act 1976.

- 2.8 As a general rule, operational day to day decisions are the responsibility of the Environmental Health Manager. Policy decisions are determined by the Licensing Committee. Disciplinary or medical issues that call into question whether an existing driver or new applicant is “fit and proper” are referred to Licensing Sub-Committees. Matters relating to the setting of fees and charges require full Council approval.
- 2.9 The Licensing Manager reports to the Environmental Health Manager and has regular meetings and contact with the Chairman of the Licensing Committee.
- 2.10 The Council as Licensing Authority has a statutory duty to license the hackney carriage (“taxi”) and private hire trade. This is wide ranging and includes the licensing of all drivers operators to ensure they are fit and proper to be licensed, and making sure vehicles are suitable and safe for use and properly maintained.
- 2.11 The primary and important purpose of the legal framework is the protection of the public. This is endorsed by Department of Transport Best Practice Guidance (BPG) for Taxi and Private Hire Licensing which says: “The aim of local authority licensing of the taxi and private hire vehicle trades is to protect the public”. This encompasses the physical safety, comfort and convenience of people using taxis as well as their financial interests (for example, protection against unscrupulous or dishonest drivers or operators).
- 2.12 The licensing of drivers, operators and vehicles is necessarily vigorous. Drivers must pass tests to ensure the appropriate level of knowledge of the Borough’s routes and landmarks, the conditions and bye-laws that apply, and must also satisfy the licensing officers that they have a good standard of spoken English. The English test is conducted on a one-to-one basis and applicants must satisfy the officer that (s)he can conduct a basic conversation in English. Applicants must also pass a test of basic numeracy. New applicants also have to pass an advanced driving test suitable for taxi and private hire drivers.
- 2.13 Applicants must meet the DVLA Group 2 medical standard, which is the same as that required to drive lorries. This can mean that drivers’ medicals have to be referred to an independent medical advisor.
- 2.14 Applicants must have an enhanced criminal record check, which involves detailed checking of ID documentation. Immigration checks are also undertaken to make sure a person has the right to work in this country. This includes regular liaison with the Home Office.
- 2.15 Vehicles must meet the Council’s minimum criteria so that they are safe, fit for purpose, and comfortable.
- 2.16 These processes are labour-intensive as they require face to face interaction on a one to one basis.
- 2.17 In terms of enforcement, Spelthorne Borough Council aims to ensure its powers are used as effectively and proportionately as possible. This includes investigating complaints from the trade, members of the public and police, and acting on intelligence about potential unlicensed activity. Low level infringements of the rules are dealt with via the Council’s Penalty Points Scheme which was introduced in 2011 and reviewed in April 2015.
- 2.18 The team follows the Environmental Health Enforcement Policy, which has regard to the principles of “Better Regulation” which encourages a risk-based

approach to enforcement. Like Police, some of the most effective enforcement the team deals with is desk-based investigative work. The highest priority in terms of taxi and private hire licensing is dealing with unlicensed drivers due to the obvious risk they pose to the public. At the very least, an unlicensed driver would not be covered by insurance. Last year the team secured the conviction of a driver who was caught taking private hire journeys in an unlicensed car. This followed intelligence given to us anonymously. Offences such as charging more than the metered fare would also be taken seriously, and the team is currently taking a driver to court for allegedly overcharging a group of disabled people.

- 2.19 A further licensing case in court this month is a person who was caught selling prize draw tickets in the High Street, giving the impression of being a charitable collection. The man appears to have been operating in several authorities in the South-East and yet we seem to be the first authority to take him to court. Although this is not a taxi or private hire case, it shows we are not a soft touch when it comes to proportionate enforcement.

### **Rank provision**

- 2.20 Section 63 of the Local Government (Miscellaneous Provisions) Act 1976 empowers licensing authorities to appoint taxi stands within its area. The legislation refers to “stands” but they are more commonly referred to as “ranks”. The legislation requires that consultation take place with the police and highways authorities, and any bus companies. In Spelthorne, such consultation is widened to include the trade, councillors, businesses and residents.
- 2.21 Best Practice Guidance does not specifically give advice on the provision of ranks. However it does recognise that Taxi and PHV services have a valuable part to play in overall transport provision and should form a part of Local Transport Plans (LTPs).
- 2.22 The Licensing Manager attends regular Parking Review meetings between Spelthorne and Surrey County Council colleagues, both staff and councillors, for which provision of taxi ranks is a standard agenda item.
- 2.23 Licensing staff also review from time to time the provision and location of taxi ranks in the Borough, working in close partnership with both Surrey County Council (Highways) and Surrey Police (on road safety matters). This is normally instigated by suggestions from the trade. The last review of rank provision was undertaken in autumn 2014.
- 2.24 Whilst Spelthorne Borough Council works hard to assist taxi drivers and operators in order to carry out its statutory duty to protect the public, and we are proud of our record of turning around licences quickly to make sure that drivers continue to be able to work, it should be noted that the Council has no wider role in protecting existing taxi drivers’ trade.

### **3. Taxi and Private Hire licensing and the economic needs of the Borough**

- 3.1 Whilst it is recognised that transport affects everyone and is essential for a strong economy and society, providing access to jobs, services and leisure activities, the report author has not been able to find any reports or studies that specifically correlate taxi and private hire licensing with economic needs. This would be a matter for the Department of Transport and Highways authorities responsible for Local Transport Plans.

3.2 However, in order to ensure a joined-up approach, the Council maintains strong links with the Economic Development team within the Council, as well as Surrey County Council Highways, the rail authorities, Thorpe Park, bus companies and other key partners as appropriate.

#### **4. Value for money and fee setting**

4.1 Fees charged are reviewed annually. This involves an exercise undertaken to ensure proposed fees reflect, as accurately as possible, the amount of staff time and fixed costs involved in processing licensing applications. It is only fair that the full cost of operating the licensing system is recovered by the Council, otherwise Council Tax payers are effectively subsidising the service. It is also important that there is full cost recovery at a time when the Council is faced with cuts in central government funding while trying to protect frontline services.

4.2 Fees are also compared with those of neighbouring authorities. Currently, Spelthorne's fees are lower than those set by Runnymede, for example.

4.3 This annual review is also the subject of full consultation with the trade, who are invited to make comments which must be considered before the proposed fees are approved. Fees set for the period 2016 to 2017 did not attract any objections from the trade. This may be because the main consideration for setting fees is cost-recovery and that issues such as perceived lack of enforcement or the difficulties the trade may have in sustaining income levels are not matters that can be taken into account when setting fees.

4.4 When opportunities have arisen, the Environmental Health Manager has looked to review the way the licensing service is provided, including the possibility of shared services with neighbouring authorities. This has not been taken up by the authorities that were approached. However this demonstrates that we are always mindful of finding ways to ensure that we continue to provide a good value service.

#### **5. Current issues of concern to the taxi and private hire industry (including those outlined in responses from the trade)**

##### **5.1 Gresham Road Taxi Rank**

5.1.1 It is abundantly clear that Gresham Road taxi rank is by far the most profitable and therefore popular rank in the Borough in regular use by the taxi trade and customers. Gresham Road rank is also highlighted as an issue by the drivers who provided comments for consideration.

5.1.2 There have historically been problems with some drivers not respecting the five vehicle limit, contributing to road safety concerns at peak times. In 2009, the issue was recognised as getting out of hand in the mornings, particularly during times when numbers of passengers were alighting from trains and looking to be transported to Thorpe Park.

5.1.3 There are adopted bye-laws that require a hackney carriage vehicle to move on when a rank is full. Failing to do so is known informally as "over-ranking". The exact wording is as follows:

7b: (The driver of a hackney carriage shall, when plying for hire in any street and not actually hired): "if a stand, at the time of his arrival, is occupied by the full number of carriages authorised to occupy it, proceed to another stand".

- 5.1.4 In 2009, a concerted effort was made to address the safety issues that this often blatant over-ranking posed. This entailed daily visits to the rank, including weekends and Bank Holidays, to observe and note vehicle movements. A number of drivers were subsequently subjected to enforcement action for breaches of the bye-law. This took a staged approach starting with formal warnings, progressing to formal interviews. There were also a number who were referred to licensing sub-committees which led to several drivers having their licences suspended for one or two months, and two drivers had their licences revoked for repeated offences.
- 5.1.5 In 2011, the Council introduced a Penalty Points Scheme (PPS) and breaches of this bye-law were then dealt with via the PPS.
- 5.1.6 Graham Cannon from Surrey Police sent a letter in January 2014 (attached as **Appendix 5**) which recognised the positive impact the concerted enforcement had on the congestion in the area. He was however concerned about the potential safety issues posed by shuttle buses that take commuters from the Gresham Road side of Staines Railway Station to businesses in the Causeway.
- 5.1.7 Action taken to address this includes Surrey CC introducing double yellow lines behind the rank and designating an area close to the Cherry Orchard Junction as a pick up and drop off point.

In light of these changes and the fact the last assessment by police was almost two years ago, a further joint visit was undertaken on 9 November 2016 to assess the current situation. The findings are at **Appendix 5**.

## **5.2 “Marshalling Scheme”**

- 5.2.1 In an effort to avoid enforcement action, some drivers started to operate an unofficial marshalling scheme in Gresham Road. At one point this involved a person observing the rank and letting drivers in the scheme know, in turn, when a space became available on the rank. Drivers not in the scheme objected to this on the basis that it gave drivers in the scheme an unfair advantage over those who were not. The Council did not and would not endorse the scheme. However there were no offences under which we were able to take formal action, even if we could get incontrovertible evidence of what was happening. The marshal did not last more than a few months but we have reports of a new system whereby drivers communicate with each other to let others know when spaces become available. Again, it is not an offence for drivers to communicate with each other. If drivers are observed to be obviously blocking a space, or if dangerous manoeuvres are witnessed, then we would take the appropriate action against the driver.

## **5.3 Staines Cars**

- 5.3.1 Another clear issue with the rank in Gresham Road is its proximity to Staines Cars (formerly Ronia), from whom strong objections and complaints have been received over the years. Two of the responses received from drivers as part of this exercise drive for Staines Cars. Whilst we fully understand their frustration and accept that there is some encroachment on their business, and customer confusion, we have to balance that with the needs of the hackney carriage trade and also be mindful that customers should have a choice.

- 5.3.2 Staines Cars tell us that the rank is often overflowing with taxis hoping to get fares from customers alighting from late night trains. We do not dispute that this may at times be the case. However, when undertaking late night visits to licensed premises with police, officers will often divert to the rank at different times of night to check, and have not witnessed the over-ranking that has been alleged. Furthermore, we have not had complaints from residents or anyone other than licensed drivers about congestion in the area at night, and there are not the same congestion issues as the road is otherwise quiet.
- 5.3.3 Regular daytime visits to Gresham Road Rank are undertaken, both covert and overt, and this will continue. Night visits will be undertaken as resources allow.

#### **5.4 Other ranks**

- 5.4.1 The main side of Staines Railway Station is also a rank that is well-used. This is on railway owned land and, unusually, the rail authorities have not imposed a charge for using the rank spaces.
- 5.4.2 Others ranks are available to serve the night time economy, but it is clear that this has also radically changed over the last five years.
- 5.4.3 Most of the other ranks in the Borough are not used, or are misused by the public or drivers who we suspect are not using the space with the intention of plying for hire.
- 5.4.4 There is one space outside Ashford Station, on rail authority land. This is rarely used for the purpose for which it was intended and the rail authority recently told us they were proposing to remove it. We raised strenuous objections and the proposed removal has been dropped for the time being. However they are very unlikely to be persuaded to increase the rank spaces to three, as has been proposed by drivers as part of this exercise.

Ranks at other railway stations in Sunbury and Shepperton have been explored but the rail authorities proposed a disproportionate charge for their use per driver (which amounted to more than the licence fee drivers pay to us) and there were no guarantees that there would be accompanying enforcement by them.

- 5.4.5 Possibly the most viable place for a further rank is inside Staines Bus Station. Both Surrey Highways and the bus companies objected to this when the proposal was made some years ago. That, coupled with the fact that, at the time, the bus station was due to be radically reduced as part of a planned development to the Elmsleigh Centre, meant that it was not implemented. A compromise was made and a rank placed outside Communications House (Thames Street). This has almost never been used. The Licensing Team has therefore re-started the process necessary to implement a rank in the bus station and decommissioning the rank outside Communications House and would welcome any political influence in making this process as smooth as possible.
- 5.4.6 It is worth noting that most hackney carriage drivers do not (and indeed, we accept they *cannot*) solely rely on ranks to earn a living. Most take pre-booked journeys though building up a customer base, or via an operator or a taxi circuit, whereby drivers share pre-booked journeys.

#### **5.5 Uber (and other out of Borough licensed operators)**

- 5.5.1 Uber is an American company which develops, markets and operates a mobile app which allows consumers to make a trip request which is then routed to drivers. Effectively it is a technology platform that mediates between supply and demand using smartphones. Uber is a licensed operator in many UK cities including Birmingham, Bristol, Leeds, London, Manchester, Newcastle and Sheffield. More locally it is licensed with the boroughs of Windsor and Maidenhead, and Slough, as well as with Transport for London (TFL). Uber has not made an application to Spelthorne and is not licensed by Spelthorne.
- 5.5.2 We can understand that drivers get upset when out of borough drivers are seen picking up, dropping off and even waiting in the borough. The fact is a private hire driver can legally pick up and drop off anywhere as long as the driver, vehicle and operator are licensed by the same authority, wherever that may be. This is known as the 3-licence rule.
- 5.5.3 Since Uber is a licensed operator in a number of neighbouring boroughs, including the TFL area, they are going to be seen here and will be taking bookings locally through the app. The high court has ruled that the app is not a meter, so they are not plying for hire when using the app.
- 5.5.4 There appears to be a widely-held perception that cars licensed elsewhere who are driving or waiting in the Borough are all working for Uber. This is not necessarily the case. The law has recently changed to allow Operators to sub-contract work to operators who are licensed in other boroughs, (see below under De-regulation Act 2015), again as long as the 3-licence rule is engaged.
- 5.5.6 There is some evidence that vehicles licensed elsewhere are, from time to time, parking on or near designated ranks in Spelthorne. Where drivers have sent us photographic evidence of this, and other important information such as the exact location, date and time, we have reported the matter to the relevant licensing authority for them to take appropriate action.

## **5.6 Duty to enforce?**

- 5.6.1 One of the drivers who responded has suggested that (in the legislation) “it states that in return for my fees the council agrees to supervise and control the ranks”. This is not quite accurate. Section 70 of the Local Government (Miscellaneous Provisions) Act 1976 allows councils, when setting fee levels, to include the reasonable costs of determining and granting licence applications, providing ranks, and costs in connection with “the control and supervision of hackney carriages and private hire vehicles”. This does not impose a duty for councils to control and supervise ranks. However we accept that we have powers to enforce and it is implicit that such activity is expected to occur.

## **6. Recent developments in taxi and private hire licensing**

### **6.1 Law Commission Report**

In May 2014 the Law Commission published the outcome of its review into taxi and private hire licensing law. The main recommendations in the report were:



- Retention of the two tier system that distinguishes between taxis and private hire vehicles on grounds of consumer choice and appropriateness (a single system would lead to over or under-regulation)
- Significant changes to the legal distinction between taxis and PHVs on the grounds that the current system relies heavily on the imprecise concept of “plying for hire”, which is not defined in statute and has become the subject of a body of case law that is not wholly consistent
- Freeing up cross-border working for PHVs so that operators would no longer be limited to using drivers and vehicles from their own licensing area
- A single consolidated legislative framework throughout England and Wales, including London, to include transport currently exempt such as wedding and funeral vehicles
- Common national standards for vehicles drivers and operators determined by the Secretary of State
- New criminal offences specific to the trade
- Improved equality and accessibility by requiring disability awareness training for drivers
- Enhanced powers for licensing officers including granting powers to stop a licensed vehicle on a road, to impound vehicles for touting, and to issue fixed penalty notices, and
- A uniform hearings and appeals system across England and Wales for all forms of licence.

The Government has not yet issued its formal response to the report. As there were no plans to bring forward a Taxi Bill, the Government included three of the proposed measures in what is now called the Deregulation Act 2015 (only two of which made it into the final Act).

## **6.2 Deregulation Act 2015**

In March 2014 the Government published two measures relevant to taxi and PHV licensing:

- To set a standard duration of three years for a taxi and PHV driver’s licence and a standard duration of five years for a PHV operator’s licence, and
- To allow a PHV operator to sub-contract a PHV booking to another operator who is licensed in a different licensing district

The third measure, which was removed from the Bill at Lords Committee Stage, would have allowed people who do not hold a PHV driver’s licence to drive a PHV when the vehicle was not being used by a PHV.

## **6.3 Future developments in taxi and private hire licensing**

### **6.3.1 Immigration Act 2016**

The Immigration Act 2016 is set to make immigration status and right to work checks a mandatory component of the licence application process for taxi and private hire drivers and operators. New provisions will also add immigration

offences and penalties to the list of grounds on which driver and operator licences can be revoked. This will not make any difference in Spelthorne since we already do stringent checks on the immigration status of new applicants and if in any doubt we will check with Home Office contacts.

### **6.3.2 Disability Equality Training (Taxi and private hire drivers) Bill 2016-17**

This Bill was presented to parliament in June 2016 and expected to have its second reading this month (November 2016). This Bill proposes to make the completion of disability equality training a mandatory component of the licence application process for taxi and private hire drivers in England and Wales.

### **6.3.3 Child Sexual Exploitation**

Partnership working is currently underway between all Surrey Districts to agree a consistent approach across the county to reduce risks of child sexual exploitation. This includes looking into training to ensure that licensed drivers are aware of the warning signs that could indicate when a passenger is at risk of child sexual exploitation, and a consistent and definitive policy on convictions.

This is work in progress and a report will go to the Licensing Committee at the appropriate time.

#### **Background papers:**

Department of Transport Best Practice Guidance

#### **Appendices:**

- 1 Draft Policy for the licensing of taxi and private hire**
- 2 Letter sent to drivers and operators 1 September 2016**
- 3 Responses received from drivers**
- 4 Responses from Surrey County Council and Surrey Police**
- 5 Letter(s) from Graham Cannon, Casualty Reduction Officer, Surrey Police**