

## AGENDA ITEM NO 5

**TITLE: Deferred Decision Single Colour 9 August 2010 and Recommendations on How to Proceed.**

Committee: Licensing Committee

Date: 18 October 2010

Author: Principal Environmental Health Officer (Commercial)

[K146]

### 1.0 ISSUE

1.1 To consider the advice provided by the Council's Legal department in light of the letter received from the National Private Hire Association ("NPHA") with regards to the introduction of a single colour and/ of silver for Hackney Carriage vehicles within the District of East Cambridgeshire.

### 2.0 RECOMMENDATION(S)

2.1 That Members:

- a) rescind the resolution of the 9 December 2009 in relation to Vehicle Colour Standards, with no further action at this time on single colour; or
- b) rescind the resolution of the 9 December 2009 in relation to Vehicle Colour Standards and undertake a paper based consultation exercise on whether to introduce a single colour policy (and what colour) for Hackney Carriage Vehicles in East Cambridgeshire with the local taxi trade (drivers, operators and vehicle proprietors) and other organisations recommended in the Department for Transport<sup>1</sup> for a period of 12 weeks; and
- c) *If recommendation b) is followed*, officers to report back to Committee to decide any further action.

### 3.0 BACKGROUND/OPTIONS

3.1 At the Licensing meeting held on the 9 December 2009, Members resolved that there would be a single colour for Hackney Carriage vehicles, to be introduced when current vehicles are replaced, and that there would be consultation with the taxi trade only regarding this matter within 12 months.

3.2 Vehicle proprietors were invited to attend a consultation Working Party on 8 July 2010 to discuss the introduction of a single colour for Hackney Carriage vehicles within the District. (see previous report 9 August 2010 and appendices).

3.3 Nine vehicle proprietors attended the Working Party meeting and of those, five agreed with the introduction of the colour silver for Hackney Carriages. A silver colour was suggested and agreed on by the trade. The five members who attended the consultation Working Party meeting on the 8<sup>th</sup> July 2010 own around 1/3 of the Hackney Carriages within the District.

<sup>1</sup> "Taxi & Private Hire Vehicle Licensing: Best Practice Guidance" March 2010 Appendix 1

- 3.4 Prior to the Licensing Committee meeting on 9<sup>th</sup> August, 2010, the Council received a letter from the National Private Hire Association challenging the introduction of a single colour of silver for Hackney Carriage Vehicles.
- 3.5 As a result of the letter received from the National Private Hire Association, Members resolved that a decision on the introduction of a single colour for Hackney Carriages be deferred to enable legal advice to be obtained with regard to the proposed Committee report of 9 August, 2010 and the purported challenge to the imposition of a single colour by the NPHA.
- 3.6 Livery & Advertisements: Members also asked for clarification on the definition of livery and advertisements and this is covered in the Arguments/Conclusions below.

#### 4.0 ARGUMENTS/CONCLUSIONS

- 4.1 Having considered the advice provided by the Council's Legal department in relation to the letter received from the NPHA, it is recommended that the previous decision on single colour be rescinded.
- 4.2 If Members still wish to proceed with further consideration of a single colour, then this must be on the basis of the DfE guidance on the role of licensing and accord with the requirements of section 47 Local Government (Miscellaneous Conditions) Act 1976, namely: As the DfE guidance confirms, the role of Licensing "*Is to protect the public. Local licensing authorities will also be aware that the public should have reasonable access to taxi and PHV services and that Licensing requirements which are unduly stringent will tend unreasonably to restrict the supply of taxi and PHV services, by putting up the cost of operation or otherwise restricting entry to the trade. Local licensing authorities should recognise that too restrictive an approach can work against the public interest – and can, indeed, have safety implications*". Conditions can be imposed on a licence under section 47 Local Government (Miscellaneous Conditions) Act 1976, which provides that "*(1) A district council may attach to the grant of a licence of a hackney carriage under the Act of 1847 such conditions as the district council may consider reasonably necessary. (2) Without prejudice to the generality of the foregoing subsection, a district council may require any hackney carriage licensed by them under the Act of 1847, to be of such design or appearance or bear such distinguishing marks as shall clearly identify it as a hackney carriage. (3) Any person aggrieved by any condition attached to such a licence may appeal to the magistrates' court.*"
- 4.3 The Legal advice is that if Members then decide to pursue a single colour consultation, that this will be a wider and more extensive exercise on whether to introduce, and if so the colour and that this be carried out in line with the Department for Transport's Taxi guidance of March 2010. Namely: that it will need to include all of the taxi trade (drivers, vehicle owners and operators), and other organisations or groups likely to be the trade's customers, for example, groups representing disabled persons, Chambers of Commerce, organisations with a wider transport interest, women's groups or local traders. It is also recommended that this be for a minimum period of 12 weeks<sup>2</sup> and can be achieved through a paper-based consultation exercise.

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<sup>2</sup> as recommended by the Central Government's Code of Practice on Consultation

- 4.4 It is important that in addition to consulting widely and in line with best practice, that the findings of the consultation result in unambiguous conditions which are enforceable and clear to both officers and the taxi trade.
- 4.5 To this end, if this option is approved it is recommended that following the consultation exercise, officers collate the findings of the consultation and report back to Committee, with, if appropriate, any suggested condition (and a timetable for implementation).
- 4.6 In relation to livery - there appeared to be some confusion expressed at the Licensing Committee meetings of 9 December 2009 and 9 August 2010 as to whether this definition includes colour. The Legal Section confirmed that a condition definition could do so. In "Button on Taxis: Licensing Law and Practice", it says *"in addition to the actual mechanical specification of the vehicle, conditions can be attached in relation to its visual appearance, and a number of authorities have liveries for their Hackney Carriages. In some cases this is the traditional black, especially in the case of purpose-built vehicles, but other authorities are rather more imaginative and have contrasting bonnet and boot lids or doors"* The definition of livery can therefore include colour, and a condition defining the ECDC taxi livery can be provided in the conditions, which will either include or exclude colour (*depending on what decision Members finally make at Committee*). If the Members decide to proceed with 2.1 a) then a colour will not be included within any definition that ECDC adopts. Equally if option 2.1 b) & c) are taken forward and the Committee decides to approved a single colour, then the condition definition on livery would include whatever colour(s) is/ are approved.
- 4.7 Advertisements – queries were raised on this issue again at the meeting of 9 August 2010. The definition of advertisement in condition 4.1 on page 41 of the "Blue Book" indicates that it refers to third party advertising only. A recommendation was approved on 9 December 2009 and any appropriate changes can be dealt with under the process detailed in 4.8 below.
- 4.8 *Dependent on the decision taken*, the Licensing Officers will also bring back the Council's Taxi Licensing Guidance, to take into account the recommendations of 9 December 2009 on Roof sign Standards, Plate Display Standards, Vehicle Markings – Livery and Advertisements conditions (to ensure that the wording is clear and enforceable before circulation to the trade) and review wording on other conditions in the light of the recent DfT Guidance (footnote 1) and Local Government Regulation standard conditions for the taxi trade.
- 5.0 FINANCIAL IMPLICATIONS
- 5.1 The cost of carrying out a paper based consultation exercise in line with those organisations and persons as recommended in the DTI's taxi guidance.
- 6.0 APPENDICES
- 6.1 Appendix 1 Department for Transport "Taxi & Private Hire Vehicle Licensing: Best Practice March 2010.

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<b><u>Background Documents</u></b>	<b><u>Location</u></b>	<b><u>Contact Officer</u></b>
Taxi and Private Hire Guide May 2009, Version 5 Agenda and Minutes of Meeting held December 9 <sup>th</sup> 2009 Terms of reference working party Minutes of working party held 8 July 2010 Agenda, report and Minutes of meeting held 9 August, 2010 Copy of letter received from NPHA	Room The Grange, Ely	Mrs E A Bailey Principal EHO (Commercial) (01353) 665555 E-mail: elizabeth.bailey@eastcambs.gov.uk