

## **A.4 HACKNEY CARRIAGE/PRIVATE HIRE VEHICLES CONSIDERATION OF ACCEPTANCE CRITERIA**

(Report prepared by Alan Tolmie)

### **PART 1 – KEY INFORMATION**

#### **PURPOSE OF THE REPORT**

To appraise Members of the decision of the appeal held at Newcastle Crown Court on 31 August 2005 and afford them the opportunity to revisit the determination made at their meeting of 1 November 2011 concerning the requirement that, as from 3 January 2012, “new vehicles licensed by this Authority to be of a standard design of white with the bonnet and boot/rear panel coloured in the Tendring corporate green with the Council crest but not full logo to be displayed on the front doors of the vehicle”. Also to seek Members’ approval to reduce the number of mechanical tests undertaken by vehicles at the Council’s Depot from two to one per annum.

#### **EXECUTIVE SUMMARY**

Members may recall that at their meeting of 1 November 2011, Minute 18(13) refers, Members determined to amend the acceptance criteria for vehicles to include a condition requiring all new Hackney Carriage vehicles licensed on or after 3 January 2012 to be white with a green bonnet and boot/rear panel and to display the Council’s crest on the front door panels. Since making your determination, officers have been made aware of a decision made at Newcastle Crown Court. This court decision was brought to the Councils attention by a taxi driver.

Following appraisal of this court decision the Councils legal service recommended that should any future challenge be made against Tendring District Council in respect of the decision to introduce a liveried taxi fleet (as recommended at the November licensing committee meeting) that it would be prudent for members of the committee to be made aware of this court decision and have the opportunity to confirm the original decision of the committee, or revise it.

The Newcastle crown court decision is attached as an appendix to this report.

Further investigation of the Newcastle Crown court decision has been undertaken by licensing officers and a summary of their findings along with a general conclusion is discussed later in this report in part 3 – background.

Further to this at the meeting of 1 November 2011 your officers reported that part of the overall package was to improve the service given to the trade and therefore reduce their overheads. It is therefore proposed to reduce the requirement to have two mechanical tests from two to one per annum. It is proposed that the Council test should be scheduled six months from the date of the MOT, thus still maintaining a twice yearly check of the vehicle and ensuring that safety is not compromised. This would mean less inconvenience to the trade and a reduction in the annual vehicle licence fee. Should Members determine to progress with a liveried fleet, then the saving would offset the cost of having the vinyl panels applied to the vehicle.

#### **RECOMMENDATION**

**That Members determine:-**

**(a) Having considered the new information, Members agree to proceed with**

the requirement that all vehicles wishing to be licensed as Hackney carriages are to be white with the bonnet and boot/rear panel to be Tendring corporate green

- (b) Subject to (a) above being approved a suitable logo/design is incorporated on the front door side panels of the vehicles.
- (c) Not to proceed with the condition requiring all new vehicles licensed on or after 3 January 2012 to be white with the bonnet and boot/rear panel to be Tendring Corporate green.
- (d) That approval be given to reduce the requirement to have two mechanical tests from two to one per annum.
- (e) Subject to (a), (b), or (d) being adopted a new inception date be determined that will allow time for members to further consider logo designs for the side panels.

## **PART 2 – IMPLICATIONS OF THE DECISION**

### **DELIVERING PRIORITIES**

The proposed revision of the acceptance criteria supports the Council's Corporate Strategy in providing a low crime area and reducing the fear of crime.

### **FINANCE, OTHER RESOURCES AND RISK**

#### **Finance and other resources**

Should Members determine to proceed with the requirement that all new vehicles will be white with the bonnet and boot/rear panel to be Tendring Corporate green there will be minimal financial costs to the Authority. Those costs can be met from existing budgets. The proposed reduction in the vehicle licence fee will have a cost neutral effect to the authority as the fee for the mechanical test is incorporated in the overall vehicle licence fee.

#### **Risk**

By revisiting the decision made at the November meeting and having considered all the implications of the Durham Crown Court decision, should Members determine to adopt the requirement that, from a future date, all Hackney Carriages should be white with the bonnet and boot/rear panel in Tendring Corporate green, it will minimise the chance of a successful appeal against that decision.

### **LEGAL**

The proposed action is within the Council's discretionary powers.

### **OTHER IMPLICATIONS**

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Consultation/Public Engagement.

#### **CRIME AND DISORDER**

The inception of this revision should lead to a reduction in the fear of crime.

## **EQUALITY AND DIVERSITY**

An Equality Impact Assessment has been undertaken.

## **AREA/WARDS AFFECTED**

All wards

## **PART 3 – SUPPORTING INFORMATION**

### **BACKGROUND**

As a result of an information letter sent to all drivers informing them of the intended changes, your officers received information about a legal challenge, heard before Durham Magistrates, brought by a driver against Durham City Council who had stipulated that all new vehicles to be licensed by them would have to be white. The Magistrates ruled against the Council. Durham Council then appealed to Newcastle Crown Court. The appeal was heard before His Honour Judge Carr who dismissed the appeal by Durham City Council and awarded costs against them. While the circumstances were not exactly the same, there were sufficient similarities for your officers to seek the opinion of the Council's solicitors as to the likely outcome of any challenge. The Legal Department agreed that there was an expectation that the Authority would lose an appeal of this nature as Members had not been made aware of the Crown Court decision and that, in the light of this new information, Members should have the opportunity to revisit their decision.

Your Officers have now studied the Crown Court decision, delivered on 31 August 2005, and are satisfied that there are sufficient clear distinctions between what was being proposed by Durham City Council and what is intended for this District to be able to withstand any challenge in court.

The main points are:-

1. That white in colour is not reasonably necessary as:-
  - (a) "White as a colour deteriorates faster" - A web search for favourite colours named white as one of the top five colours and it has been proven to depreciate at a slower rate.
  - (b) Durham City wished to adopt white as part of a countywide colour scheme – TDC will adopt a "stand alone" livery of white with Tendring Corporate green flashings.
  - (c) Ease of identification - Essex police are supportive of the change to liveried vehicles and, because of concerns over unlicensed drivers and vehicles operating in the county, have launched operation "Night Owl" which aims to educate vulnerable people about personal safety and, among other points, how to best recognise a properly licensed taxi.
  - (d) His Honour, Judge Carr stated that it was unreasonable to expect a vehicle that had been involved in an accident and which had then taken more than 6 weeks to repair had to be re-sprayed white to conform to the Durham City Council Policy. – In Tendring existing vehicles would have "grandfather rights" until the vehicle reached its age limit and if a vehicle was involved in an accident it would retain the licence plate and any temporary replacement vehicle would be issued with a separate temporary plate for as long as was necessary.
  - (e) Judge Carr questioned the ease of availability of second hand white vehicles – A search of the web reveals no particular difficulty in obtaining a white vehicle (a sample of the Tesco Website is attached). With regards to a new vehicle, the Ford Motor Company stated that there

should be no longer waiting time than for any other colour. It has also been reported that there has been a 60% increase in the number of white vehicles sold in the previous 12 months, therefore increasing availability in the second hand market.

- (f) It was mooted in the court case that Hire Purchase Companies would not allow their vehicles to be re-sprayed or liveried - A check with Vantruckhire, Cab Direct and Pineapple, the most prominent companies who advertise in the Trade Press found that they had no objections to the lessee altering the vehicle.

There are many local authorities who have liveried fleets of hackney carriages, several of whom adopted this policy after the above decision was announced, the nearest of which is Colchester Borough Council.

There have been complaints about the additional costs involved in having the vehicle liveried. Your officers propose that, should Members agree to proceed with a liveried fleet, and without compromising safety, the requirement for testing vehicles at the Council depot be reduced to once per annum, six months after the MOT certification of the vehicle, thus reducing the vehicle licence fee and covering the cost of the livery over the 10 year period that the vehicle would be licensed as a taxi.

#### **CURRENT POSITION**

Your officers have written to all drivers informing them of the intention to allow Members to reconsider their position as a result of the new information received and asking them not to do anything regarding changing vehicles until Members have revisited their decision.

#### **BACKGROUND PAPERS FOR THE DECISION**

Extract of Newcastle Crown Court decision

#### **APPENDIX**

Newcastle Crown Court decision

**June Clare**  
**Head of Public Experience**