

Licensing and Registration Committee

28 September 2016

Report of Corporate Director (Operational Services)

A.1 Report on results of public consultation regarding review of Tendring District Council's current Hackney Carriage and Private Hire Vehicle Seating Capacity Policy for Multi-Purpose Vehicles (MPV's) which carry up to 8 passengers.

Report prepared by Simon Harvey

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

The Licensing and Registration Committee is asked to consider the results of the public consultation held to review the Council's current seating capacity policy for Multi-Purpose (MPV) hackney carriage and private hire vehicles which carry up to 8 passengers and to determine what the Council's future policy should be in regards to a permitted seating maximum for MPV's licensed as hackney carriage and private hire vehicles in Tendring.

EXECUTIVE SUMMARY

- The Council's seating policy was introduced to sustain and promote passenger safety in licensed taxi and private hire MPV's by the Council's Licensing Sub Committee following consultation with the taxi trade in August 2002 and submission from organisations such as the Royal Society for the Prevention of Accidents (RoSPA).
- The review of the MPV seating policy was recommended to the Licensing and Registration Committee because the policy has been in place since its introduction on the 1 August 2003 and there have been substantive changes since then to vehicle technology and safety which should be reviewed and taken into consideration. The policy was successfully challenged last year by a hackney carriage proprietor although this challenge is not binding on the policy itself and relates solely to the vehicle licence of the individual who made the challenge, such a challenge does add weight however to the prudence of reviewing and re-consulting on the policy.
- At its meeting on the 20 January 2016 the Licensing and Registration Committee agreed to review Tendring District Council's current seating policy in place for Multi - Purpose Vehicles (MPV's) licensed as hackney carriage or private hire vehicles to carry a maximum of 8 passengers and to put that review out to the scrutiny of a 12 week public consultation
- The twelve week consultation period ended on the 2 May 2016 and this report is to advise and apprise Members of the outcome of the consultation and to offer a number of options in respect future policy.

RECOMMENDATION(S)

There is no specific recommendation made to Members as to the outcome of this review and what their final decision should be.

Instead their attention is drawn to four possible options shown below that are available to them to adopt as a reasonable and proportionate decision in regards to a future MPV seating policy for Tendring District Council that encompasses and promotes passenger safety, comfort and practicality in a reasonable and proportionate way after having duly and fully weighed up the full contents of this report, all responses received to the consultation and review of the Council's current MPV seating policy, all appendices and background papers supplied as part of this report and after considering all aspects and opinions in regards to this review in their own right and on their own merit.

These options are:

- 1) Retain the current MPV seating policy; or
- 2) Withdraw the current MPV seating policy which requires the removal of a seat to allow access and egress to the rearmost seats in MPV's licensed by Tendring District Council and permit the vehicle to be licensed for the number of passenger seats as indicated by the vehicle registration document (VR5); or
- 3) Change the current MPV seating policy to the MPV seating policy adopted by Basildon Borough Council in January 2015 (as described in the table of Essex Authorities MPV seating policies shown above). or
- 4) Re-consult on the issue again for a further period of time to be specified by the Committee in order to see if there is any further interest shown, or comment received from the taxi and private hire trades and other relevant organisations and make a final decision on the future of the current MPV seating policy after this re-consultation.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Our Prosperity

- Promote sustainable economic growth

There have been concerns in the past raised by the Taxi proprietors and owners of taxi businesses that the that the Council's current seating policy in respect of MPV's is too restrictive in terms of limiting their vehicle choice and that vehicle technology, choice of seating configuration and overall passenger safety has improved significantly for all manufacturers in the twelve years that the policy has been in place. Their concern is that the Council's policy is restricting their business and income by reducing the passenger capacity that some of their vehicles are limited to as a result of the policy.

There is therefore a reasonable and proportionate balance to strike between promoting the safety and comfort of customers using taxi and private hire vehicles and promoting the growth of the taxi industry in our district which directly and indirectly provides significant employment in our area.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

- The implementation, administration and compliance of the policy is undertaken from existing budgets although legal and other potential costs may be awarded

against the Council if the policy is successfully challenged in Court.

Risk

- There is a financial and reputational risk to the Council of any successful legal challenge made against its current MPV seating policy.
- A reasonable and proportionate balance needs to be achieved to ensure an acceptable level of safety for fare paying passengers travelling in vehicles licensed by our District while also considering the opinions of those interested parties that responded to the twelve week consultation.

LEGAL

Any decision made by the Licensing and Registration Committee in regards to matters of grant, renewal, suspension or revocations of licences and attachment of policies or conditions to individual hackney carriage and private hire licences can be appealed to the Magistrates' Court and from there to the Crown Court.

In the event of the appeal being allowed by these Courts, the costs of any such hearing could be awarded against the Council.

In terms of challenging policy decisions, appeals can also be made by way of a Judicial Review to the Administrative Court in the High Court and again in the event of an appeal being allowed by this Court, the costs associated with the hearing could be awarded against the Council.

Sections 47 and 48 of the Local Government (Miscellaneous Provisions) Act 1976 allows Council's to consider the design and appearance of vehicles to be licensed for the purposes of undertaking hackney carriage and private hire transport in its district and also provides that conditions can be attached to a hackney carriage and private hire vehicle proprietors licence as the district Council "may consider reasonably necessary".

There is no scope, caveat, restriction or guidance as to what may be considered as "reasonably necessary" within the Act in terms of attaching conditions to a vehicle licence but the standard of "reasonableness" imposed by the Courts is high and what is "unreasonable" has been said by the Courts to be "whether an authority had acted, or reached a decision, in a manner so unreasonable that no reasonable authority could ever have come to it" (Associated Provincial Picture Houses Ltd. v Wednesbury Corporation (1948) and in subsequent cases the Courts have considered whether a decision is "... so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it." (Council of Civil Service Unions v Minister for the Civil Service (1985))

Section 48 of the Local Government (Miscellaneous Provisions) Act 1976 does include the caveats in relation to private hire vehicles that a district Council shall not grant a licence to use a vehicle as a private hire vehicle unless they are satisfied that the vehicle is:

- In a suitable mechanical condition;
- Safe; and
- Comfortable

The Act is silent in this regard in terms of hackney carriages, but clearly it would not be

'unreasonable' to apply or expect to apply the same criteria, i.e. in a suitable mechanical condition, safe and comfortable.

The Courts have upheld a Council's powers to set local conditions and policy on a number of occasions as stated cases.

The most recent stated cases of interest being R v Hyndburn Borough Council ex p Rauf and Kasim 12 February 1992 QBD and R v City & County of Swansea (Respondent) Ex Parte Julie Amanda Jones (Applicant) 1996 EWHC Admin 290

While these cases have involved the setting of maximum age policies in respect to hackney carriage and private hire vehicles, nonetheless the Courts of appeal have upheld the principle of a Council's right to set reasonable policies that do not fetter the discretion of the Council in relation to the hackney carriage and private hire vehicles that it licences.

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

Not applicable to this matter.

EQUALITY AND DIVERSITY

Each hackney carriage or private hire vehicle application is considered in its own right and on its own merits and in respect of MPV's are determined in accord with the Council's seating policy for MPV's which are used to carry up to 8 passengers.

AREAS/AWARDS AFFECTED

All

CONSULTATION

A twelve week consultation process was undertaken which included letters to all Tendring licensed taxi and private hire drivers and proprietors sent dated the 5 February 2016, the Tendring District Taxi Association, Essex Fire and Rescue Service, Essex Police, Department for Transport, RoSPA, the Automobile Association and Royal Automobile Club, local and national mobility groups such as Age UK, Disability Essex and Tendring Community Transport inviting their comment and feedback on the review of the current MPV seating policy and whether or not this policy should be amended in any way. A copy of the template for these letters are attached to this report as **APPENDIX 1**.

In total 336 letters were sent out to invite consultation and comment on the review. Copies of all of these letters will be available for Members and any other interested party as background papers at the meeting on the 28 September 2016.

In addition to this, there were also two local press releases issued by the Council in relation to the MPV seating consultation inviting public comment on the current policy

particularly from users of taxi and private hire transport dated the 11 February 2016 and the 14 April 2016 respectively and a taxi newsletter sent by first class post to all Tendring licensed taxi and private hire drivers and proprietors dated the 14 April 2016 which featured the consultation prominently on the front page of the newsletter and which again invited views and comments on the current policy.

The consultation was also advertised on the taxi licensing page of the Council's web site.

This was therefore a wide ranging and well publicised consultation undertaken in regards to a review of the Council's current policy and in terms of the length, scope and content of consultation meets with the underlying principles of the Governments own guidance on consultations and which is available on the GOV.UK web site.

Despite the consultation involving a total of 321 taxi and private hire drivers, as well as the other groups mentioned above, a disappointing total of only 8 responses were received which includes 7 from the licensed Tendring taxi and private hire trades. To put this into context, a total of 336 consultation letters were sent out including to all 321 taxi drivers licensed as at the 5 February 2016. There are 62 MPV's licensed by Tendring District Council with these licences being held by 52 individual proprietors. Only 7 of these proprietors responded to the consultation.

All of the consultation letters, taxi newsletters, press releases and articles and also the relevant extract from the Councils taxi licensing web page will be available as background papers for the scrutiny of Members and any other interested parties should they wish to do so at the Licensing and Registration Committee meeting of the 28 September 2016.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

At its meeting on the 20 January 2016 the Licensing and Registration Committee agreed to review Tendring District Council's current seating policy in place for Multi - Purpose Vehicles (MPV's) licensed as hackney carriage or private hire vehicles to carry a maximum of 8 passengers and to put that review to a period of 12 week consultation. It was agreed that this consultation would include all Tendring District Council licensed taxi and private hire drivers and proprietors, the Essex Fire and Rescue Service, RoSPA, representatives of local mobility groups and also the public through the use of local media and the Councils web site. The minutes of the Licensing and Registration Committee of the 20 January 2016 are attached to this report as **APPENDIX 2**

The Council's seating policy was introduced to sustain and promote passenger safety and comfort in licensed taxi and private hire MPV's by the Council's Licensing Sub Committee following consultation with the taxi trade in August 2002 and submission from organisations such as the Royal Society for the Prevention of Accidents (RoSPA).

The review of the MPV seating policy was recommended to the Licensing and Registration Committee because the policy has been in place since its introduction on the 1 August 2003 and there have been substantive changes since then to vehicle technology and safety which should be reviewed and taken into consideration when

considering whether the policy should be amended in anyway, or should or should not be retained in its current form.

Implementation of the current policy was also successfully challenged last year by a hackney carriage proprietor. Although this challenge is not binding on the policy itself and relates purely to that individual who made the challenge, such a challenge does add weight to the prudence of reviewing and re-consulting on the policy.

The Council's current MPV seating policy is shown in full and attached to this report as **APPENDIX 3**.

CURRENT POSITION

There has been opinion voiced amongst the Tendring taxi and private hire trades that the Council's current seating policy for MPV's licensed to carry up to 8 passengers is restrictive in respect of the make and models that are open for them to purchase and licence in order to maximise passenger seating options. In addition it is said that the policy is unnecessary in terms of present day vehicle safety and technology and also unnecessary given the choice of seating configurations available for passengers in MPV's.

At the time of writing this report, there were 62 MPV's licensed with Tendring District Council (which are vehicles with between 5 and 8 passenger seats). There were 52 proprietors/licence holders for these vehicles which means that some proprietors hold more than one vehicle licence.

In order to review the current MPV seating policy which has been in place for twelve years and as noted above, has been subject to one successful individual challenge at the Magistrates Court last year, all 321 Tendring licensed taxi and private hire drivers as at the 5 February 2016 were written to in relation to the review. They were all invited to give their views and comments on whether the policy should be amended, withdrawn or retained. The Tendring District Taxi Association which is the local trade organisation representing Tendring taxi drivers was also invited to give their views and comments on the policy review.

As part of the consultation, views were also specifically sought on the MPV seating policy introduced by Basildon Borough Council in January 2015 after consultation with its taxi and private hire trades on whether the policy adopted by Basildon would be a viable and acceptable alternative to Tendring's current MPV seating policy. In effect consultees were asked whether the Basildon BC policy was, and would be, a reasonable and proportionate measure that would sit between either entirely withdrawing, or entirely retaining, Tendring's current MPV seating policy.

The Basildon BC policy can be summarised by saying that they changed their seating policy requiring unrestricted access and egress to seating in January 2015 and vehicles must now have at least three doors to passenger accommodation, signage showing how to lift seats properly, yellow/orange coloured operating levers, unobstructed windows, exit window signs and an internal device for the rear hatch doors to be opened from the inside of the vehicle.

Full details of all of the individuals and organisations consulted with are available at the Licensing and Registration Committee meeting of the 28 September 2016 as

background papers for the scrutiny of Members and any other interested parties and many of the organisations written to are included within the 'consultation' information above which forms part of this report.

In all, 321 drivers and vehicle proprietors licensed by Tendring District Council as at the 5 February 2016 were written to along with their Tendring District Taxi Association.

Disappointingly for such a consultation, only 7 responses were received from the taxi and private hire trades out of the 321 consultation letters sent out to them on the 5 February 2016 and 321 taxi newsletters sent out on the 14 April which reminded all drivers and vehicle proprietors about the consultation, what it was for and when the closing date was for responses. All 7 of these responses were received from proprietors of licensed MPV's. As indicated above, at the time of writing this report there were 62 MPV's licensed by Tendring District Council with the licences held by 52 individual proprietors.

To put these numbers into some context in regards to the responses received to the twelve week consultation, only 13% of MPV licence holders/proprietors responded to the consultation.

In addition to these 7 responses there was also a response received from the Royal Society for the Prevention of Accidents (RoSPA).

All of those responding have been sent a letter acknowledging receipt of their submission.

Summarised Responses from Taxi and Private Hire Trades Including Summary of Licensing Managers Reply

Out of the 7 responses received from the taxi and private hire trades only 1 consultee was in favour of retaining the policy. All of the other 6 consultees wished to see the policy withdrawn and MPV's licensed for the passenger numbers shown on the vehicle registration document (VR5). These responses along with the Licensing Managers reply/comments in reply to the individual responders are shown attached to this report as **APPENDIX 4**.

The responses received from the taxi and private hire trade and the general reply to them can be summarised as follows:

One taxi driver felt that there was no consistency in the way the current MPV policy was applied, but referred to vehicles with different seating numbers and configurations which actually suggests that rather than there being no consistency, the policy is being applied consistently and is taking each case and vehicle in its own right and on its own merits.

Another suggestion was that Colchester Borough Council licence small MPVs to carry 6 passengers. It is unclear in respect of which vehicles that suggestion is made but the policy Colchester BC have is to licence MPVs to carry the number of passengers that the vehicle manufacturer states the vehicle is designed to carry.

The suggestion that all vehicles should be licensed to carry the number of passengers they were designed for was made by two further respondents one of who relates the

number of seats to how an MPV may be used or hired by a family during different times of the day . However the day to day use to which an MPV may be put by a family for example, may greatly differ from the use it is put to commercially as a licensed vehicle, when it may have to carry not only a maximum number of passengers, but also their luggage too and which if they are travelling for a holiday, such as being transported to the airport, may mean a number of suitcases and other luggage also being carried leading to a very different level of comfort, access and egress to the rear seats of the vehicle and also potentially safety for passengers.

A suggestion from two of the respondents was that TDC should be looking at the policies of Colchester BC and Ipswich BC for a comparison of our current MPV seating policy, rather than Basildon BC's policy. However, the purpose of the reference to the Basildon policy was that its policy falls between, for example, the policies of Colchester BC and Ipswich BC and TDC – in effect, a compromise position, but a position that was offered as a suggestion only for an alternative to the current TDC MPV seating policy, not the preferred or definitive policy that the Council was looking to adopt.

There was one suggestion that the removal of one or more seats might cause the vehicle to become unstable or reduce the structural integrity of the vehicle in a collision, but no evidence was provided for such a suggestion.

A respondent said that all MPVs are tested by the Department for Transport (DfT) for safety, and that if the DfT says a vehicle is safe, then the vehicle should be deemed to be safe. However, the DfT do not actually test all MPVs as suggested but all vehicles driven on roads in Great Britain must comply with the appropriate legislation and/or regulations including for example:

- The Road Vehicles (Construction and Use) Regulations 1986
- The Motor Vehicle (Type Approval) Regulations 1980 and
- The Motor Vehicle (Type Approval) (Great Britain) Regulations 1984.

One respondent thought that passengers would not like, for example, yellow handles or signs in the backs of cars and felt that such things would lead to passengers choosing vehicles without such items. No evidence has been put forward to support that proposition. Of course, if such an approach were to be adopted as policy by TDC then all MPVs would be required to comply with such requirements meaning that no one driver or operator could be singled out.

The final suggestion arising from the consultation responses is that if the current policy were changed in any way that all vehicles currently licensed as MPVs should continue to be licenced under the "old" policy until such time as that vehicle reaches the end of its useful life, or it is changed for some other reasons; in effect "grandfather's rights" are being suggested.

If the L&R Committee do decide to change the MPV policy then it will be a matter for that Committee to decide on any transitional arrangements which could include "grandfather's rights" or may take some other form such as determining from a certain time all vehicles must comply with a new policy thereby giving proprietors a number of years notice that they may need to change their current vehicle in order to be compliant with a new policy.

Any other matters referred to in the responses received will be able to be viewed by Members as part of the agenda and who will be able to ask questions on these matters

if they think that it is pertinent to do so within the context of the review of the Council's MPV seating policy.

The responses from the taxi trade are included in full as part of **APPENDIX 4** to this report and are also summarised as part of **APPENDIX 4** in the date order that they were received and are shown in italics for ease of reference and distinction. The spread of response dates reflects the twelve week consultation period and also the fact that some writers responded following the reminder for the MPV seating policy review given in the taxi newsletter sent to all drivers and proprietors on the 14 April 2016.

Not all comments are reproduced entirely verbatim, but have been summarised to reflect the tone and content of the response as accurately as possible.

Response from RoSPA

The Royal Society for the Prevention of Accidents (RoSPA) responded by e-mail dated 27 April 2016. Their full response is shown attached to this report as **APPENDIX 5**.

That response can best be summarised as follows.

In RoSPA's view, passengers should be able to exit a taxi or private hire vehicle without having to climb over, or move a seat. However, it acknowledges that it does not think it is possible to estimate the additional risk to passengers who need to move a seat in order to exit the vehicle because so far as RosPA are aware, the necessary accident and casualty data does not exist.

Without such data it is difficult for RoSPA to estimate the potential effects of changing our policy to remove the requirement that every seat must be accessible without having to fold or tip up another seat.

In addition RoSPA note the alternative seating policy operated by Basildon District Council which, in its view allows the retention of seats that have to be moved in order for passengers to enter or exit the vehicle, provided the vehicle has:

- at least three doors to the passenger compartment
- clear signs on how to lift seats in the second row
- operating levers to lift the seats that are coloured yellow or orange
- windows on the near and offside of the rear row of seats that can be used as exits in an emergency, with window exit signs
- a quick door release device on the rear door for use in an emergency if one of the side passenger doors is inaccessible in an accident

RoSPA's view is that Basildon's policy seems to offer a reasonable way of mitigating the risk of passengers in the rearmost row struggling to exit the vehicle in an emergency because they have to climb over or move another seat but acknowledge that it still leaves some risk that a passenger may struggle to exit the vehicle quickly in an emergency.

However, with the current level of data and knowledge available it is not possible for, RoSPA to be certain whether this option is best.

RoSPA also draw attention to Paragraph 93 of the DfT Guidance "Taxi and Private Hire Vehicle Licensing: Best Practice Guidance", published in 2010 (itself consulted on

in 2005) and available at <https://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-best-practice-guidance> which states:

The Department encourages local licensing authorities, as a matter of best practice, to play their part in promoting flexible services, so as to increase the availability of transport to the travelling public. This can be done partly by drawing the possibilities to the attention of the taxi and PHV trade. It should also be borne in mind that vehicles with a higher seating capacity than the vehicles typically licensed as taxis (for example those with 6, 7 or 8 passenger seats) may be used.

While the guidelines state that vehicles, such as people carriers, can be licensed as taxis, they do not specifically address the issue of whether or not a passenger seat should be removed as part of the licensing conditions.

Licensing Managers Reply to RoSPA Consultation Response

Only RoSPA have commented on the Basildon BC policy in any positive way. It is difficult to gauge from the very small number of persons from the taxi trade (7 out of the 321 written to) who responded to the consultation what their views actually might be on the possibility of adopting a policy similar to Basildon's seating policy as a replacement or alternative for TDC's current MPV seating policy. Certainly there is no mandate to adopt a MPV seating policy along the same or similar lines to Basildon's amongst the majority of those that have responded.

RoSPA is a charitable organisation which for almost 100 years has formulated policies, practices and influenced legislation to prevent accidents and promote safety in a variety of industries and circumstances. Its views on the seating arrangements in MPVs (or people carriers) used for taxi or private hire work has not changed since the late 1990s.

The Licensing Managers full response to RoSPA's submission is also included as part of **APPENDIX 5** to this report.

Other Relevant Information – Department for Transport

The Department for Transport also gives in its Taxi and Private Hire Vehicle Licensing Best Practice Guidance further information/opinion on the vehicle types that may be licensed by local licensing authorities. The full DfT Taxi and Private Hire Taxi and Private Hire Vehicle Licensing Best Practice Guidance is available as a background paper to this report. The relevant salient paragraphs of the DfT best practice guidance in relation to vehicle types that may be licensed by local authorities are however reproduced below for the information of the Committee and all other relevant parties to this report.

VEHICLES

Specification Of Vehicle Types That May Be Licensed

26. The legislation gives local authorities a wide range of discretion over the types of vehicle that they can license as taxis or PHVs. Some authorities specify conditions that in practice can only be met by purpose-built vehicles but the majority license a range of vehicles.

27. Normally, the best practice is for local licensing authorities to adopt the principle of specifying as many different types of vehicle as possible. Indeed, local authorities might usefully set down a range of general criteria, leaving it open to the taxi and PHV trades to put forward vehicles of their own choice which can be shown to meet those criteria. In that way there can be flexibility for new vehicle types to be readily taken into account.

28. It is suggested that local licensing authorities should give very careful consideration to a policy which automatically rules out particular types of vehicle or prescribes only one type or a small number of types of vehicle. For example, the Department believes authorities should be particularly cautious about specifying only purpose-built taxis, with the strict constraint on supply that that implies. But of course the purpose-built vehicles are amongst those which a local authority could be expected to license. Similarly, it may be too restrictive to automatically rule out considering Multi-Purpose Vehicles, or to license them for fewer passengers than their seating capacity (provided of course that the capacity of the vehicle is not more than eight passengers).

Licensing Managers comments in relation to DfT Best Practice Guidance

The conclusion that could be drawn from the DfT best practice guidance is that vehicle manufacturers spend significant sums of money developing these Multi-Purpose Vehicles in terms of performance, energy efficiency, technology and driver and passenger safety and that local taxi and private hire licensing authorities should not lightly intervene in determining that these vehicles should be licensed for fewer passengers than the manufacturer recommends or is shown on the vehicle registration document. Although it is accepted this is not expressly outlined in such terms it is in their best practice guidance. This is however advisory best practice guidance only for local licensing authorities and is not mandatory or binding as is sometimes suggested, but there should be a clear and explained reason for deviating from this guidance should Members decide to do so and retain the current MPV seating policy for example.

Other Relevant Information – Essex Authorities Seating Policies

It may be helpful for the Committee and all other parties that have an interest in this report or access to it, to be apprised of the policies that other Essex Licensing Authorities may have in respect of seating requirements/arrangements for MPV's licensed in their area and which carry up to 8 passengers. A table showing the policies of other Essex authorities is attached to this report as **APPENDIX 6**.

The table attached to this report as **APPENDIX 6** therefore advises the current MPV seating policy position of those authorities as at the time that this report was written in September 2016 and where it has been possible to gather those details.

As the Committee will see from this table, Tendring is not alone or unique amongst Essex Authorities in requiring the removal of a seat from an MPV on safety grounds where customer access or egress is restricted.

It should also be mentioned for the information of Members that in terms of other nearby authorities, Ipswich Borough Council do not have any restriction on seating capacity and will licence the number of passengers for the vehicle as per the details

shown on the vehicle registration document.

Conclusions

- TDC's current MPV seating policy has been in place since 1 August 2003
- It has been successfully challenged last year in a Magistrates Court but the decision and outcome of the appeal affected the individual only who made the appeal. It is not binding on the policy as a whole and does not overturn the policy.
- It was however prudent in the circumstances that the policy was reviewed and re-consulted on with the taxi and private hire trades in particular.
- The consultation has run for a full 12 week period which is accepted best practice and was a wide ranging and well publicised consultation, particularly with the taxi and private hire trades. It also took in other groups and organisations like the Essex Fire and Rescue Service, Department for Transport, RoSPA, the Automobile Association and Royal Automobile Club, local and national mobility groups such as Age Uk, Disability Essex and Tendring Community Transport.
- The response to the consultation was extremely disappointing particularly from the taxi and private hire trades where only 7 responses were received from 321 initial letters and 321 taxi newsletters sent out during the twelve week period to further highlight the consultation and to act as a reminder for it.
- There was no appetite or support from those that responded from the taxi trade or private hire trades for the policy that has been adopted by Basildon Council in relation to MPV seating as alternative to requiring the removal of a seat to allow access and egress to rear seating.
- In its response to the consultation, RoSPA maintains its support for Tendring District Council's current MPV seating policy that "passengers should be able to exit a taxi or private hire vehicle without having to climb over or move a seat". They have expressed the same opinion and given the same safety advice as part of this consultation process as they did previously when the policy was first adopted in 2002. RoSPA have also advised that the Basildon's MPV seating policy seems to offer a reasonable way of mitigating risks to passengers in the rearmost row of MPV seating however it still leaves some risk that a passenger may struggle to exit the vehicle quickly in an emergency.
- The DfT best practice guidance for taxi and private hire vehicle licensing issued in 2010 advises that "it may be too restrictive to automatically rule out considering Multi-Purpose Vehicles, or to license them for fewer passengers than their seating capacity (provided of course that the capacity of the vehicle is not more than eight passengers)". This is however advisory best practice guidance only for local licensing authorities and is not mandatory or binding as is sometimes suggested, but there should be a clear and explained reason for deviating from this guidance should Members decide to do so and retain the current MPV seating policy for example.
- The outcome of this review is a difficult matter for Members to decide on as there has been no clear mandate received to change the Council's current MPV seating policy, or any mandate or specific evidence received in order to adopt an alternative to the current MPV seating policy such as the option chosen by Basildon Borough Council and its taxi and private hire trades. It is of course still open to Members to do so, but they must be able to give a clear and explained reason for doing so.

Options/Possible Ways Forward

Given the unfortunate lack of response from the Tendring licensed taxi and private hire trades and also the lack of response from all of the other relevant organisations that were invited to reply to the twelve week consultation apart from the notable exception of RoSPA, it is suggested to Members of the Licensing Sub Committee that there are now four possible options for them to consider in determining an outcome to this review of the Council's MPV seating policy.

These are:

- 1) **Retain the current MPV seating policy; or**
- 2) **Withdraw the current MPV seating policy which requires the removal of a seat to allow access and egress to the rearmost seats in MPV's licensed by Tendring District Council and permit the vehicle to be licensed for the number of passenger seats as indicated by the vehicle registration document (VR5); or**
- 3) **Change the current MPV seating policy to the MPV seating policy adopted by Basildon Borough Council in January 2015 (as described in the table of Essex Authorities MPV seating policies shown above). or**
- 4) **Re-consult on the issue again for a further period of time to be specified by the Committee in order to see if there is any further interest shown, or comment received, from the taxi and private hire trades and other relevant organisations and make a final decision on the future of the current MPV seating policy after this re-consultation. This option would however have a financial and staffing resource impact on the taxi licensing service as it would mean repeating the entire consultation and the staff time and costs that this has involved with no guarantee of any significant or different results being received to the first consultation undertaken. Such a cost would have to be borne from the service and ultimately all of the vehicle licence fee payers concerned.**

BACKGROUND PAPERS FOR THE DECISION

- DfT Best Practice Guidance for Taxi and Private Hire Vehicle Licensing March 2010
- Copies of all consultation letters, taxi newsletters, press releases and articles and also the relevant extract from the Councils taxi licensing web page

APPENDICES

APPENDIX 1 - Template for consultation letter on review of MPV seating policy
APPENDIX 2 - Minutes of the Licensing and Registration Committee 20 January 2016.
APPENDIX 3 - Tendring District Council's current MPV seating policy.
APPENDIX 4 - Responses from Taxi and Private Hire Trade to consultation.
APPENDIX 5 - Response from RoSPA to consultation.
APPENDIX 6- Table of other Essex Authorities MPV seating policies