

MAIDSTONE BOROUGH COUNCIL

LICENSING COMMITTEE

7 OCTOBER 2013

REPORT OF HEAD OF HOUSING AND COMMUNITY SERVICES

Report prepared by Lorraine Neale

1. HACKNEY CARRIAGE LICENCE - UNMET DEMAND SURVEY – LETTER FROM A2Z LICENSING

1.1 Issue for Decision

To consider the outcome of investigation of the matters raised in a letter (Appendix A) received 21 June 2013 in relation to the Unmet Demand Survey carried out by Amey and the current position following further matters raised in a letter, from the same party, on 29, August 2013. Committee will remember that the Unmet Demand Survey report was scheduled to be considered at its meeting on 24 June 2013 but was deferred in order to investigate the issues raised within the letter received from A2Z Licensing and report to the next meeting.

1.2 Recommendation of Head of Housing and Community Services

1.2.1 That Members note the Officers report on the investigation of the issues raised by A2Z Licensing in their 21, June letter and that further issues raised in the 29, August letter are subject of ongoing research.

1.2.2 Members agree that this be further reported to Committee at its 14, November meeting, to enable them to be satisfied that any decision on hackney carriage numbers is based on an appropriate unmet demand survey.

1.3 Reasons for Recommendation

The 21, June Issues.

1.3.1 **Did Maidstone Borough Council pass an amalgamation resolution under s180 and paragraph 25 of Schedule 14 to the Local Government Act 1972 to apply s 171 (4) of The Public Health Act 1875 to the whole borough of Maidstone in relation to hackney carriage licensing under the Town Police Clauses Act 1847 and the adoption resolution under s45 (2) of the Local**

Government (Miscellaneous Provisions) Act 1976 to apply Part II of that Act throughout the whole area.

On 08/12/77 a report to Transportation Committee recommended that the existing authority areas for hackney carriage purposes should be amalgamated to cover the whole Maidstone Borough area and that Part II of the 1976 Act adopted for the whole area. It recommended that authorization be given to give notice of the intention to do so at full Council on 15/03/78. On 25/01/78 that report was adopted. Records show that a report was received by Transportation Committee on 07/02/78 in respect of both amalgamation and adoption and it was recommended that the Council resolve to adopt the resolutions, with effect from 17/04/78 at the latest. At full Council on 15/03/78 the report to Transportation Committee was adopted without amendment. The notices of intention to adopt those resolutions were published in the Kent Messenger on 03/02/78 and 10/02/78. After further research on the subject it was discovered that there was a later decision rescinding the adoption part of the resolutions that should have come into effect on 17/4/1978. This was following from advice given by the Home Office when approval was sought. It led to the amalgamation resolution continuing as before and the adoption resolution being rescinded and remade for the 1976 Act provisions to take effect from 5, June 1978 for the whole Borough area. It is also clear from these documents that the SoS had notified intention to extend the hackney carriage legislation to the whole borough from 17, April 1978 and that notices to parishes had been given and would have to be sent again following rescission of the adoption resolution and remaking of it. There was a supplemental report to the Transportation Committee on 29/03/78 and that Committee then recommended to Council. On 27/04/78 Council adopted the 1976 Act provisions. The adoption resolution had been advertised, amended to have an effective date of 05/06/78, in the Kent Messenger on 07/04/78 and 14/04/78.

The materials referred to are attached as;

Appendix B

Report of Transportation Committee 8/12/77, see **4**.
Minutes of Council 25/01/78, see **3**.
Report of Secretary to Transportation Committee 07/02/78, see **6**.
Report of Transportation Committee 07/02/78, see **2**.
Minutes of Council 15/03/78, see **6**.
Supplemental Report of Secretary to Transportation Committee 29/03/78.
Report of Transportation Committee 29/03/78, see **2**.
Minutes of Council 27/04/78, see **5**.

Appendix C

Advertisement 03/02/78 hackney carriages
Advertisements 10/2/78 hackney carriages
Advertisements 07/04/78 and 14/04/78 adoption 1976 Act whole area.

1.3.2 Amey arranged a meeting with A2Z's client which subsequently was cancelled and rescheduled. A2Z's client could not attend the rescheduled meeting due to a prior arrangement. It later transpired that no meetings with Private Hire Operators were carried out and that Amey had appeared to abandon that part of their brief.

Amey were contacted and the question put to them. They informed that the date originally given for meeting private hire operators was given as the same time as that for the hackney carriage trade, in error. Amey considered it important to allow each to express their views without being inhibited by the presence of the other and rearranged the time for the operators. Four major private hire operators were invited and whilst aware that A2Z's client was unable to attend on the new date it was understood that at least one of the other three operators would try to attend. In the event, following a reminder, there were no attendees. However, all four operators were sent a copy of the driver survey and a letter inviting their views on hackney carriage provision in Maidstone, by telephone, email or by completing and returning the survey form. None of the operators, including A2Z's client, took the opportunity of those alternatives to express their views. It was considered that there was a reasonable level of responses from the private hire sector as 20 private hire drivers responded to the survey.

Amey the report writer is willing to delete the word, "chose" from paragraph 5.3.1 of the survey report and insert, "were able" prior to, "to attend". The Council is satisfied that reasonable attempts were made to seek the views of A2Z's client and that the Council can reasonably rely on the survey as reported on this matter.

Amey's full response can be seen at Appendix D

1.3.3 There was an apparent failure to consult various stakeholders, especially those representing the elderly and disabled.

There is no formal list or definitive guidance on who should be contacted for consultation in the case of a survey. DfT guidance provides a list at annex A and at paragraph 50 refers to "user groups (which should include groups representing people with disabilities ...)". (Appendix E) As part of their consultation Amey included Voluntary Action Maidstone, Sheltered Schemes for the Elderly, Kent association

for Disabled People and 7 residential homes for the elderly. There were also 428 valid survey responses obtained from on street surveys. As the report indicates 21% of the responses were from those over 65. The Council is satisfied that these together with all other consultees encompass a range of stakeholders meeting the DfT guidance and provide an opportunity for a reasonable selection of views to be taken into account.

Ameys full response can be seen at Appendix D

1.3.4 The Report has not accurately recorded the actual rank provision in the Borough (which may) or may not be relevant to a final recommendation in connection with capping the number of Hackney Carriages in the Borough. Specifically the rank at Maidstone East Station, the report states there are 5 spaces, but photos of the site show there to be more.

An investigation of rank provision has been carried out. As the report states the rank observations carried out as part of the survey were of ranks considered by the Council to be those actively used by the trade, during the time of the survey. The "rank "at the East Station is on land in the ownership of the rail network and any vehicles using it require permits from Meteor, it is not a public highway rank. The Council understood there to be 5 spaces for use by Hackney Carriages and this area was notified to Amey as it was considered to be an area where there is demand. We have been informed by Meteor that the current lined spaces, as photographed by A2Z's client (picture at Appendix A), were painted during 2012. It is accepted that there are now more than 5 spaces painted but not that this would affect any assessment of unmet demand made in the report. The factual situations observed form part of an indicator of significant demand which, even when calculated across the week as a whole, falls well below the threshold of a finding of no significant unmet demand.

1.3.5 General

Officers are satisfied that their investigations demonstrate amalgamation of areas to the current MBC area and adoption of the 1976 Act for the whole area. They are also satisfied that the survey carried out meets the requirement to provide evidence on levels of unmet demand and is not rendered insufficient by the matters raised in the 21, June letter. The information given above has been provided to A2Z Licensing and they responded indicating that they do not propose to raise the extension and adoption matters at this time but may do so in future depending on the outcome of a case currently pending appeal in the Divisional Court. It is Officers' view that this matter can be distinguished in some aspects from that case in any event. The response on 29, August also raised further matters on the

issue of rank provision and sought considerable historic information on the provision in Maidstone. That information is currently being researched and it has not been possible to conclude that prior to this meeting. Whilst it is believed that the outcome of the research will not affect the evidential value of the survey Officers would wish to have the opportunity to fully consider matters raised before finally advising Members on their options for decision on Hackney Carriage numbers. It is intended that a further report be brought to the meeting in November.

1.4 Alternative Action and why not Recommended

Alternative action would be for Members to consider the decision on the future of quantitative restrictions prior to completion of research. To do so could give rise to public uncertainty in relation to that decision. Advice should be available for the November meeting and, therefore, not cause undue delay or unduly increase the length of time since consideration of the last survey and reduce the risk of challenge to evidence on quantitative restriction.

1.5 Impact on Corporate Objectives

Arriving at a carefully considered decision meets the Councils objective of corporate and customer excellence

1.6 Risk Management

1.6.2 The Unmet Demand Survey undertaken by Amey is currently considered to meet evidential requirements for use in any quantitative restriction decision but it is considered that further research should enable Officers to provide considered guidance to members on this and enable a decision which has least risk of any legal challenge.

1.7 Other Implications

1. Financial
2. Staffing
3. Legal
4. Equality Impact Needs Assessment
5. Environmental/Sustainable Development
6. Community Safety

X

- 7. Human Rights Act
- 8. Procurement
- 9. Asset Management

1.7.4 The legal implications are contained within the body of the report.

1.8 Relevant Documents

1.8.2 Appendices

- 1.8.3 Appendix A – Letter from A2Z
- Appendix B – Minutes of Meeting amalgamation resolution
- Appendix C – Public Notices
- Appendix D – Ameys response to queries
- Appendix E – Dft Best Practice Guidance

1.8.4 Background Documents

1.8.5 None

<u>IS THIS A KEY DECISION REPORT?</u>		<u>THIS BOX MUST BE COMPLETED</u>	
Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If yes, this is a Key Decision because:			
.....			
Wards/Parishes affected:			
.....			