

CCReport of: Transport & Parking Business Manager

To: General Purposes Licensing Committee

Date: 29th March 2007

Title of Report : Rickshaw/Trishaw Licensing



Summary and Recommendations



Purpose of report: To inform the Committee of the current situation in respect of the licensing of Rickshaws/Trishaws.



Key decision: No

Portfolio Holder: N/A

Scrutiny Responsibility: N/A



Ward(s) affected: All

Report Approved by:



Graham Smith. Transport and Parking Business Manager



Michael Smith Legal & Democratic Services



Finance Chris Kaye




Policy Framework: The Council's policy as contained in the Council's Policy Framework is to maintain quantity control on the number of hackney carriage vehicle licences in order that supply of the services of hackney carriages does not exceed the demand for those services.



Recommendation(s):

The Committee is RECOMMENDED **either** to:-

(a) (i) Confirm the Council's current policy on the limit on hackney carriage licenses.

(ii)  Note that confirming that policy will prevent, at present, the licensing of rickshaw/trishaws.

(iii) Make representations to the Government that the law be altered to enable the licensing of modes of transport of the rickshaw variety

Or to:-

(b) Instruct officers to report further on the method and consequences of abandoning the hackney carriage licence limit in order that rickshaws/trishaws may be licensed.

History

1. Rickshaws were last licensed in Oxford some ten years ago when they were licensed as omnibuses under the Town Police Clauses Act 1889 on a fixed route from stands in Broad Street and Gloucester Street. It is understood that on two occasions the rickshaw operator went out of business. The Council promoted byelaws relating to rickshaw (omnibus) operation and these are still in existence. There is Executive Board authority to revoke the byelaws but because of concerns expressed by the former operator it has not yet been acted upon. The byelaws designate stands for rickshaws but the stand locations have been removed by the traffic authority and are no longer signed.

2. One more recent application was received from the same former operator but after a considerable amount of work had been carried out the application was withdrawn.
3. Since rickshaws were last licensed in Oxford as omnibuses, the law on their licensing has changed. In 1998 the Court of Appeal decided that rickshaws/trishaws are licensable, not as omnibuses but as hackney carriages under different legislation if the rickshaw is to be used to ply for hire or reward. This is the case even if they are operating on a fixed route. This means that rickshaw/trishaws are licensable in the same way as motor vehicle hackney carriages. There appears to be no other available method for licensing them. It is not possible in law to introduce different categories of hackney carriage.

Current Situation

4. Recently there has been publicity concerning the operation of rickshaws in Oxford. The Council made the person running the rickshaw service aware of the licensing problems before he took delivery of the vehicles. He is currently operating these vehicles without a licence and taking 'donations' rather than fares. However it is the opinion of officers that this does not remove them from the definition of a hackney carriage plying for hire or reward. This person presented a petition on the subject to Council on 22nd January 2007. The petition is attached to this report as **Appendix 1**.
5. A second prospective applicant, despite also being aware of the problems has stated his intention of commencing a service in June 2007.
6. Finally, a website for 'oxoncarts' announces that they are taking bookings; it gives sample prices but is worded so that this might refer to goods.

Key Considerations

Policy

7. The Council's present policy is for a regulated number of licensed hackney carriages. A survey conducted last year by an independent firm found an unmet demand for only one additional hackney carriage. The process for awarding that licence is underway. The regulated number of licences may only be maintained on the basis of there being no unmet demand. The reason for the Council's policy is set out in the letter to the Department of Transport that is attached to this report as **Appendix 2**.
8. If in the future, the Council wished to change its mind about the regulation of hackney carriage numbers, it would need a proper basis for doing so. A legal challenge could be expected from City of Oxford Licensed Taxicab Association. Following a previous survey when the Council did not follow the survey recommendations and officers advice, it cost £10,000 in legal costs in advance of a Judicial Review, even when the Council conceded the application.
9. Licences granted to non-motorised hackney carriages must be included in the total number of hackney carriage licences granted. It is not possible to create a type of sub-licence for rickshaw/trishaws.

Safety

10. Rickshaws fall very far short of the present safety and constructional requirements for hackney carriages in Oxford. But even if a rickshaw could meet the criteria (and some are governed by legislation), the Council would not be in a position to licence a rickshaw at present due to the limit on hackney carriage licences.
11. When rickshaw licensing was last considered in Oxford safety was a major concern. Rickshaws would cause a considerable amount of congestion if allowed to use the bus lanes as motorised hackney

carriages can. Generally, in Authorities where they were licensed before the requirement that they be licensed as hackney carriages (the 1998 judgment), they were licensed for use in pedestrian areas or in quiet streets, not for use amongst motorised traffic.

Other Councils' Practices

12. Officers have made enquiries of other authorities and understand that there are rickshaws running in London, licensed under Borough byelaws. However, the legislation covering the licensing of hackney carriages and private hire vehicles in London is different to that in the rest of England. The Public Carriage Office in London is looking into the possibility of licensing rickshaws (pedicabs), having just completed a consultation process. They intend the rickshaws to be licensed as hackney carriages and have in mind that if they are licensed it be within a restricted area (this is called *zoning* and is unlawful outside London).
13. Enquiries have also been made of other Authorities that are reputed to licence rickshaws. There are Authorities that say they have regulations in place to licence them but they are either of doubtful legality (such as creating zones) or do not have a limit on hackney carriage numbers.
14. To date we have not found a local authority (outside London) that actually has a rickshaw licensed and running apart from one that is licensing two pedicabs as private hire vehicles working on behalf of a public house. This is not lawful since the legal definition of a private hire vehicle commences with "A motor vehicle....".
15. Cambridge City Council, the authority from which the 1998 Court of Appeal decision arose, did licence rickshaw/trishaws for a short period at the beginning of 2006. The rickshaws were licensed as hackney carriages but Cambridge does not have a limit on licence numbers. It is understood that the operator encountered what appears to be a common

problem. Riders are willing to drive the vehicles as and when it suits them but are not reliable and are unwilling to take the tests required of all licensed hackney carriage drivers. Information is that the operator went out of business after a very short time. An Operator licensed by an Authority in Wales is reported to have lasted less than one day.

Obligations on Licence Holders

16. A licensed hackney carriage driver cannot refuse a fare within a licensing district unless he has a reasonable excuse. It is doubtful if being tired or physically unable to carry out a journey would constitute a reasonable excuse. However, the physical limitations of the vehicle might be a reasonable excuse to refuse a fare. As previously stated, it is not lawful to create a zone to restrict the area of operation.
17. As mentioned in paragraph 10 above rickshaws cannot meet our licensing criteria, particularly in respect of wheelchair access. They fall within the definition of a taxi under the Disability Discrimination Act 1995 and are not one of the types of vehicles listed as exempt.
18. Fares for hackney carriages are set by the Council and are metered. It is difficult to see how this would be achieved in an unpowered vehicle. Without the ability to restrict operations to a fairly small area, a fixed fare for anywhere within a licensing area (in this case the whole of Oxford City) would not be possible.

Funding

19. The Taxi Licensing Office is funded from the fees obtained from the licence holders. Legislation requires that licence holders not be charged more than the service costs to operate. To comply with this requirement and ensure that the other licence holders were not paying the cost of the rickshaws, would either require that the licence fee for rickshaws be set at a figure that would recover the costs involved (possibly as much as £5,000), that a payment from Oxford City Council is made to the Taxi

Licensing budget, or at least that the cost is guaranteed by the Council, since history both in Oxford and elsewhere tells us that it is unlikely that they will be licensed for a long enough period to recover the costs involved from licence fees.

Conclusion

20. For all these reasons, there are considerable obstacles to be overcome if rickshaw/trishaws are to be licensed in Oxford, perhaps the most significant being the Council's current policy on limiting hackney carriage licence numbers. The Committee is being asked to decide whether they wish officers to devote resources to unravelling that policy and seeking to overcome the other problems, or whether it should be recognised that licensing rickshaws in Oxford is not appropriate at this time.

Name and contact details of author:-

Phil Pirouet

Taxi Licensing Officer

Transport and Parking Business Unit

Tel: 01865 252115 e-mail: ppirouet@oxford.gov.uk

Appendices

Appendix 1 Petition

Appendix 2 – Letter to the Department of Transport

Background papers:

None