

**SPECIAL
REGENERATION AND TECHNICAL
OVERVIEW AND SCRUTINY COMMITTEE
Wednesday 2 June 2010**

PRESENT – Councillors Gordon (substitute for Julie Slater) (in the Chair), Bateson (substitute for Mulla), Browne, K. Foster (substitute for David Pearson), Gee, Harling, Johnson, Mahmood (substitute for Khonat) and Joe Smith.

ALSO PRESENT -

Executive Member- Councillor Cottam.

Council Officers – T. Stannard, A. Scott, C Allen, D Riding, A Forrest, B. Aspinall, J Berry (the Committee's legal adviser) and D Hill (J. Tew observer)

PRESENTING THE CASE – Councillors Wright and J Smith

RESOLUTIONS

1. Appointment of Chair

In the absence of the Chair and the Vice Chair of the Committee, nominations were invited for the appointment of a temporary Chair for the meeting.

RESOLVED:

That Councillor Gordon be appointed Chair for this meeting of the Committee.

2. Minutes Silence

Prior to the commencement of the business of the meeting, the Committee observed a minutes silence as a mark of respect to the citizens in West Cumbria and their families and friends who had been affected by the tragic events that had taken place earlier in the day.

3. Welcome and Apologies

The Chair welcomed everyone to the meeting and explained that Members would hear a call-in of the Executive Member decision made on 12th March 2010 in relation to the 'Hackney Carriage – Review of Vehicle Standards'.

He confirmed that six Members of the Council had duly requested the call-in in writing.

The Chair asked for apologies or substitutes.

Apologies had been received from Councillors Julie Slater and Khonat. Substitutes for the call-in hearing were recorded as follows: - Councillors Gordon for Julie Slater, Bateson for Mulla, Mahmood for Khonat and K Foster for David Pearson.

RESOLVED – That the information be noted.

4 Declarations of Interest

RESOLVED – No declarations of Interest were made.

5 Procedure for the Call-In

The Committee's Legal Advisor outlined the procedure to be followed for the hearing of the call-in of the decision. The call-in form had been circulated with the agenda and stated the reasons for the call-in as:

- the need for more consultation and further exploration of the impact of the decision;
- the Executive Member had ignored the concerns of the Licensing Committee;
- the issuing of licences needs further discussion given the current economic climate.

The Executive Member Decision and briefing paper had also been circulated with the agenda.

RESOLVED – That the information be noted.

6 Hackney Carriage – Review of Vehicle Standards

The Chair explained that he would allow public representatives to speak. He then requested the 3 public representatives, Mr Andrew Overton, a representative of LTI Vehicles, Mr Charles Oakes, Chairman of the Hackney Carriage Drivers Association Ltd. and Mr Abdul Kasim representative of the Hackney Carriage Association individually introduce themselves; who they represent; whether they have an interest in the Executive Member decision and if so, provide information on what that interest is. Each representative was given approximately 5 minutes to present their respective representations.

Mr Overton reported, amongst other things, he was concerned at the Executive Member Decision and was pleased that the decision had been called in. He also commented that he believed the legal advice had been flawed. He also made reference to the earlier concerns of the Licensing Committee, Section 49 of the Disability Discrimination Act 1995 in

relation to the Disability Impact Assessment that had been undertaken in Norwich and reported to the Licensing Committee on 16 February 2010.

Mr Overton also referred to:

- the legal advice that had been given to the Licensing Committee in relation to the judicial review ruling in the test case Lunt v Liverpool City Council
- comments he stated had been made by the Judge following the High Court ruling in relation, amongst other things, to the Disability Discrimination provisions;
- his claim that the Peugeot E7, an alternative purpose built vehicle manufactured in Glasgow, had been substantially modified.
- the new Mercedes wheelchair accessible vehicle that meets new regulations/requirements
- the need for the Council to undertake a Disability Impact Assessment specific to Blackburn with Darwen and in consultation with relevant parties.

Mr Kasim, the second public speaker reported that:

- in March 2009, 95% of drivers agreed with the decision that had been taken by the Licensing Committee on that date and there had been no complaints from disabled.
- It was not understood how the Executive Member could have made a decision on the use of alternative purpose built vehicles without a local Disability Impact Assessment (DIA) having been undertaken.
- He was requesting the DIA be undertaken

The comments of Mr Oakes, the third and final speaker included:

- the Council's policy had been brought in due to the findings of the High Court ruling on the Lunt v Liverpool City Council case.
- it was not right to have a "one horse race" in relation to the TFI vehicle – the Hackney Carriage Association wants the best and considers the one size vehicle does not fit all;
- the Association looks at what is good for the trade, users and those North West towns the Company represents;
- a lot of different councils satisfactorily run alternative access vehicles;
- E7 private hire vehicles already operate in the Blackburn with Darwen area - what is the difference between hackney and private hire vehicles?
- there is a niche in the market.

The Chair then asked Councillors Wright and Jim Smith to outline in detail the basis of the call-in.

It was reported:

- A report had been presented to the meeting of the Licensing Committee on 5 February 2009 on the findings of a full consultation with the travelling public and the hackney trade on requests from the trade to licence other types of hackney wheelchair accessible vehicles. The Committee recommended the introduction of a two tier system that included maintaining the status quo in the borough relating to the maintenance of black cab vehicles only.
- In October 2009 the Committee received a report on the high court judgement on the Lunt/Allied Vehicles Ltd v Liverpool case. Mr Oakes' group of drivers had been represented at that Committee meeting, other drivers had not and that had not been made clear to the Committee. Based on legal advice and the drivers representations made at the meeting, the Committee recommended, amongst other things, the existing policy be amended which would allow alternative purpose vehicles.
- Following the Licensing Committee meeting a petition from the Blackburn with Darwen Hackney Carriage Association was received opposing the recommendation and indicating the Association had not been consulted. That petition was reported to the Licensing Committee on 26 November 2009.
- In light of the further representations heard at that meeting the Committee changed their recommendations which were approved by the Executive Member together with other available options. The decision of the Executive Member was subsequently called in.
- At the February 2010 meeting, the Licensing Committee had viewed different vehicles and had raised a number of questions. The recommendations made by the Licensing Committee were outlined.

Councillors Wright and Smith commented that there had been great disappointment in March when the Executive Member agreed to commission a Disability Impact Assessment and to amend the existing policy in line with the high court findings which would allow the use of Peugeot E7 vehicles.

The Councillors also commented, amongst other things, that Norwich and Liverpool City Council's Disability Impact Assessments would not necessarily work in this borough given the different geographical features of the area. Councillors Wright and Smith asked the Executive Member to ensure a Disability Impact Assessment is undertaken specific to the Blackburn with Darwen area, with the results being submitted back to the Licensing Committee for a decision based on the information.

They also expressed their surprise that on 7 May 2010 a further Executive Member decision had been published on a review of the two tier system.

The Executive Member commented that the call in was specifically about the E7 vehicle and sought legal advice on that point.

The Legal Advisor referred to the high court decision on the Liverpool case and commented the court case is setting a precedent and is really a warning for local authorities to consider the judgement.

Councillor Wright asked that all the Executive Member decisions covered by the original call in should also be the subject of tonight's call in meeting.

The Legal Advisor reported that the Executive Member had rescinded the decision he had made on 24 December 2009 and that the decision published on 7 May 2010 had not been called in. Therefore the only issue for the Committee to discuss was the call in request that had been made on the decision published on 26 March 2009.

Councillor Smith stated the call in had been made in March before the election and that 3 months later they had been advised the Executive Member was too busy for the call in meeting to have been held on an earlier date.

The Chair asked the Executive Member for Regeneration, Councillor Cottam, if he needed any further clarification from Councillors Wright and Smith and received a negative response.

The Chair offered the Committee the opportunity to question Councillors Wright and Smith.

The Chair asked the Executive Member to explain the reasons for his decision. The Executive Member explained :-

- The Council has a democratic system and one where Executive Members have cabinet responsibility.
- The trail of decisions are primarily for the benefit of taxi drivers.
- The Council has to accept the legal position.
- That he had to make the decision and had not ignored the views of the Licensing Committee but also had to take the advice of all relevant people.

The Committee's Chief Officer referred to the legal advice that had been given and reported that it was not within the discretion of the Chair of the Committee to extend the call in remit.

In response Councillor Wright commented that the agenda papers for the meeting had not separated the two issues. His understanding was that the Executive Member had requested a more detailed report and agreement had

been given not to call in the decision as it was thought the Executive Member would come back.

The Strategic Director Regeneration and Environment supporting the Executive Member presented an overview of events from 1 October 2009 including the officers' advice after the Licensing Committee meeting on 16 February 2010 to split the Executive Member decisions as the matter was becoming increasingly complex.

It was stated that in February the Council had also had an additional challenge from a disability group to take account of the High Court judgement. Further consultation would also take place through the Taxi Forum.

Applications had been received for E7 vehicles and, from February 2010, the Council had faced the threat of a legal challenge. The advice from the Council's Legal Officers has always been to follow the High Court ruling.

The Chair asked Councillors Wright and Smith if they had further questions for the Executive Member.

Councillor Wright stated the Licensing Committee had asked for the Disability Impact Assessment first before licensing alternative purpose built vehicles. He considered the real point was that on 26 March the Executive Member had agreed to do the Disability Impact Assessment. Additionally, ultimately if an area the size of East London has to determine the impact then it is thought Blackburn with Darwen should do the same. Councillor Smith further added that the Committee had not accepted the Norwich Disability Impact Assessment Study.

The Chair offered Members of the Committee the opportunity to question the Executive Member.

In response to a Committee question regarding the compatibility of black cabs for wheelchair users, Members were advised that there is not a taxi vehicle licence that covers 100% compatibility for wheelchair users.

The Legal Officer was asked for a legal definition of what could be dealt with at the meeting; what is the legal terminology and in London if there is other transport available at a cost disabled persons can afford. The officer was also asked about the potential effects of any legal challenge to the Council.

In response to Member comments relating to the advice that the Borough's Impact Assessment cannot be done until the call – in has been heard, a Disability Impact Assessment for Norwich has been done; in this Council area, Community Wheels operate E7 vehicles and all the evidence and legal advice point to the Council needing to licence an E7 vehicle – an application had been received to licence a private hire E7 vehicle and it is believed that if the Licensing Officers had refused the application the Council would have faced substantial costs.

The Chair invited Councillors Wright and Smith to sum up.

- They wanted to discuss their dissatisfaction at the Executive Member not going back to the Licensing Committee
- Some papers had been wrongly attached and had been difficult to get through; the Chief Officer had read out the elements they did not want to talk about
- It is vital the Council complies with the provisions of the Disability Discrimination Act
- Licensing has to be clear before making a decision
- Why did the Council not do the Disability Impact Assessment after the February Licensing Committee meeting?
- They would like to put back the Executive Member decision to enable the DIA to be undertaken
- A lot of assumptions have been made by the Chief Officer about the E7 vehicle
- The report does not show the e.mail exchanges that have taken place.

The Chair thanked Councillors Wright and Smith and invited the Executive Member to sum up.

- One of tonight's speakers may confirm the real threat of a potential legal challenge
- One of the Executive Member decisions was signed off under legal threat.
- I am aware that many other alternative purpose vehicles will come on the market eventually.
- We have listened to disabled people and to the trade who have to buy the vehicles.
- The decision was made on an effective legal precedent and a Disability Discrimination Impact Assessment will be done on all vehicles

The Chair asked for any final contributions from Members. He then indicated that Members of the Committee would now consider what they had heard and decide how to proceed. The Legal Advisor outlined the options available to the Committee as:

- To accept the decision or
- To refer the decision back

A third option of referring the decision to full Council was not available to Members as evidence had been produced that the decision was not contrary to either the Budgetary or Policy framework

Decision of the Meeting

The Chair advised that the Committee would now move to a named vote and that individual reasons for each decision would be recorded.

Councillors voting to refer the decision back to the Executive

- Browne - **Refer:** This is where I believe this would not have happened under the old Committee structure. I think Cirs Wright and Smith put up a good case. I would ask the Executive Member to take back and put to the Licensing committee to discuss again.
- Johnson **Refer:** lack of consultation
- Mahmood **Refer:** didn't consider the views of the Licensing committee had been taken into account. Also for Disability Impact Assessment for Blackburn with Darwen
- Harling **Refer:** for Disability Impact Assessment specific to Blackburn with Darwen
- Bateson **Refer:** on the grounds put forward for the call in plus a lot of verbal evidence has come forward – there has been no sight of correspondence or the Norwich disability Impact Study – the effect has been the information has not been before us to justify the decision.

Councillors voting to accept the decision

- Joe Smith **Accept:** Feel the legal advice and the Licensing Officer advice/information has been consistent. I agree that it has been a long drawn out process. The matter of the Disability Impact Assessment is specific to the vehicle and would be waste of money
- Gee **Accept:** for the reasons given above
- K Foster **Accept:**

Councillors not voting

Gordon

RESOLVED –

1. That the decision of the Executive Member be referred back as carried by 5 votes to 3 votes and;

2. That the Executive be informed of Scrutiny's decision as soon as possible.

Signed.....

Chair of the meeting at which the Minutes were signed

Date.....

DRAFT