

Classification: Public

Key Decision: No

Gravesham Borough Council

Report to: Planning Committee

Date: 27 September 2023

Reporting officer: Mark Lees, Regulatory Services Manager

Subject: Officer delegation in respect of taxi and private hire licence revocations.

Purpose and summary of report:

To update the Planning Committee on matters delegated to it within the council's Constitution and seek a temporary amendment to officer delegations to support effective regulation of hackney carriage and private hire driver, vehicles and operators.

Recommendations:

1. That the Planning Committee agree for the delegated authority given by it to the Director (Communities and Inclusive Growth) in relation to Licensing, as set out in 1.13B.12 of the Constitution, is temporarily amended for a period of 12 months or until such time as the current review of the Constitution has been concluded, agreed by Full Council, and implemented (whichever comes first) by disapplying the clause that:

"Any case where the Director (Communities) has concluded that a licence or permit should be revoked and any case where the requisite number of penalty points have been gained in the case of taxi enforcement shall be submitted to the Planning Committee for decision."

Key Implications:

Item	Implications
Legal	<p>The Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976, as amended, are the primary pieces of legislation relating to the licensing and regulation of hackney carriages and private hire vehicles (PHV), their drivers, and private hire operators. Sections 60, 61, 62 and 68 of the 1976 Act provide licensing authorities with powers to suspend and revoke driver, vehicle, and operator licences.</p> <p>The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, allocate responsibility for specific licensing functions to the council and prohibit the executive from exercising them, including powers relating to the licensing and regulation of hackney carriage and private hire driver, vehicles, and operators.</p>

	The licensing functions allocated to the council may be delegated by them to a committee of the council, a sub-committee, or officers under section 101 of the Local Government Act 1972.
Finance and Value for Money	There are no cost implications associated with the recommendations set out in this report.
Corporate Plan	The proposals set out in this report directly support Corporate Objective #1 People and the council's commitment to enforce high regulatory standards.
Climate Change	The Council's Hackney Carriage and Private Hire Licensing Policy sets minimum standards for taxis and PHVs, including in relation to emissions and age (which has an impact on emissions). Enhancing the ability for the council to suspend or revoke vehicle licences through effective officer delegations, including for breaches of its policy, could therefore support the council's net zero ambitions.

1. Background

- 1.1 Annex 1 of the Constitution sets out the Responsibility for Functions.
- 1.2 Annex 1.2 of the Constitution provides the Responsibilities of the Council that have been delegated to Committees and Boards of the Council, and includes a delegation to Planning Committee to "consider and determine:
 - 1.2.1 applications for licences, permits or consents; and
 - 1.2.2 cases where revocation or suspension of licences, permits or consents is proposed."
- 1.3 Accompanying this is an exception of all categories of sex establishment and applications under the Scrap Metal Dealers Act 2013, which have been delegated to the Licensing Committee.
- 1.4 Under the Constitution, the Planning Committee are therefore seemingly responsible for considering and determining taxi and private hire licence applications, and their subsequent suspension or revocation.
- 1.5 Annex 1.3 of the Constitution provides the Responsibilities of the Planning Committee Delegated to Sub-Committees, etc. and clarifies that the Hackney Carriage Sub-Committee (consisting of 3 Councillors appointed by the Planning Committee) are tasked with determining appeals against the revocation of a Hackney Carriage Licence [only].
- 1.6 Taken at face value, the Sub-Committee cannot therefore consider appeals against the revocation of any other hackney carriage or private hire licences, other than hackney carriage (vehicles), nor make any other decisions.
- 1.7 Further, all provisions of the 1976 Act which include a right of appeal against a suspension or revocation (section 60, 61 and 62) do not make mention of this being a function of sub-committees but only state that any person aggrieved by a decision of a district council under this section may appeal to a magistrates' court.
- 1.8 Annex 1.13 of the Constitution sets out the Functions Delegated to Officers of the Council, who can then give onwards delegations as appropriate.
- 1.9 The Director (Communities and Inclusive Growth) has been given delegated authority by the Planning Committee to exercise the powers and duties of the

Council as licensing authority under the aforementioned legislation, however this is caveated with a clause which states that:

- 1.9.1 “Any case where the Director (Communities) has concluded that a licence or permit should be revoked and any case where the requisite number of penalty points have been gained in the case of taxi enforcement shall be submitted to the Planning Committee for decision.”
- 1.10 Whilst the Regulatory Services Manager, Licensing Manager, Senior Licensing Officers and Licensing Officers have been given onwards officer delegations to exercise the licensing powers and duties of the council, these are only so far as in accordance with the Constitution and therefore, even though officers are able to determine licence applications, refuse to grant/renew them, issue penalty points and suspend licences, they cannot revoke them, including in an emergency or high risk situation where immediate revocation is required on public safety grounds; a scenario recently encountered which was only fortuitously resolved as a result of the licence holder agreeing to surrender their licences.
- 1.11 The Constitution is currently undergoing a phased review during which all such delegations can be reviewed however, in the interim, under the current Constitution, all decisions relating to the revocation of hackney carriage and private hire driver, vehicle, and operator licences are reserved for Planning Committee.
- 1.12 In practice, this means that all revocations would require officers waiting until the next scheduled Committee meeting, or seeking an urgent convening of the Planning Committee, even when there is a need for a revocation to take immediate effect, for example, following allegations or arrest relating to such serious public safety matters as sexual assault or violent behaviour.

2. Proposals

- 2.1 With the above in mind, it is recommended that revocations of all types of hackney carriage and private hire licences should be an additional power conferred to officers, to enable them to undertake a full range of enforcement measures as may be required and without delay to protect public safety and otherwise ensure compliance with law and policy.
- 2.2 In order to facilitate this, it is therefore recommended that the Planning Committee agree for the delegated authority given by it to the Director (Communities and Inclusive Growth) in relation to Licensing, as set out in 1.13B.12 of the Constitution, is temporarily amended for a period of 12 months or until such time as the current review of the Constitution has been concluded, agreed by Full Council, and implemented (whichever comes first) by disapplying the clause that:

“Any case where the Director (Communities) has concluded that a licence or permit should be revoked and any case where the requisite number of penalty points have been gained in the case of taxi enforcement shall be submitted to the Planning Committee for decision.”
- 2.3 This would enable the Director (Communities and Inclusive Growth) to then provide onwards officer delegations as deemed appropriate during this interim period of authorisation.

3. Appendices

3.1 There are no appendices.

4. Background Documents

4.1 There are no background documents.

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Secondary Implications	
Risk Assessment	<p>The proposed amendment to the delegations set out within the Constitution will enable authorised officers to undertake a more comprehensive range of enforcement measures, specifically including revocation and immediate revocation, as may be required and without delay in order to protect public safety and otherwise ensure compliance with law and policy.</p> <p>Not having this delegation in place will delay any such revocation action and therefore prolong any associated risk to public safety, which is the primary driver behind the taxi and private hire licensing regime.</p> <p>In addition, officers are employed and trained to undertake such tasks as part of their operational responsibilities. Members tasked with such decision making would have to receive appropriate training before being able to determine such matters in order to avoid risk of a successful legal challenge.</p>
Data Protection Impact Assessment	<p><i>A data protection impact assessment (DPIA) should be carried out at the start of any major project involving the use of personal data or if you are making a significant change to an existing process.</i></p> <p>a. Does the project/change being recommended through this paper involve the processing of personal data or special category data or criminal offence data? A definition of each type of data can be found on the Information Commissioner’s Office website via the above links. No</p> <p>b. If yes to question a, have you completed and attached a DPIA including Data Protection Officer advice? N/A</p> <p>c. If no to question b, please seek advice from your nominated DPIA assessor or the Information Governance Team at gdpr@medway.gov.uk. N/A</p>
Equality Impact Assessment	<p>a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community? If yes, please explain answer. No</p>

	<p>b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality? If yes, please explain answer.</p> <p>N/A</p>
	<p><i>In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above</i></p>
Crime and Disorder	Licensing regimes are designed to regulate licensable activities in such a way as to support the prevention/reduction of crime and disorder through the imposition of permissible conditions and appropriate enforcement.
Digital and website implications	N/A
Safeguarding children and vulnerable adults	The recommendations in this report directly support effective regulation in pursuance of public safety, including in relation to the safeguarding of children and vulnerable adults.