

# TONBRIDGE & MALLING BOROUGH COUNCIL



## EXECUTIVE SERVICES

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**Interim Chief Executive**  
Adrian Stanfield LL.B (Hons)

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**NB - This agenda contains proposals, recommendations and options. These do not represent Council policy or decisions until they have received proper consideration through the full decision making process.**

Contact: Democratic Services  
[committee.services@tmbc.gov.uk](mailto:committee.services@tmbc.gov.uk)

18 March 2024

To: MEMBERS OF THE LICENSING AND APPEALS COMMITTEE  
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Licensing and Appeals Committee to be held in the Council Chamber, Gibson Drive, Kings Hill on Tuesday, 26th March, 2024 commencing at 7.30 pm.

Members of the Committee are required to attend in person. Other Members may attend in person or participate online via MS Teams.

Information on how to observe the meeting will be published on the Council's website.

Yours faithfully

ADRIAN STANFIELD

Interim Chief Executive

## A G E N D A

1. Guidance on the Conduct of Meetings 5 - 8

### PART 1 - PUBLIC

2. Apologies for Absence

3. Declarations of Interest 9 - 10

Members are reminded of their obligation under the Council's Code of Conduct to disclose any Disclosable Pecuniary Interests and Other Significant Interests in any matter(s) to be considered or being considered at the meeting. These are explained in the Code of Conduct on the Council's website at [Code of conduct for members – Tonbridge and Malling Borough Council \(tmbc.gov.uk\)](https://www.tmbc.gov.uk).

Members in any doubt about such declarations are advised to contact Legal or Democratic Services in advance of the meeting.

4. Minutes 11 - 12

To confirm as a correct record the Minutes of the meeting of Licensing and Appeals Committee held on 29 November 2023.

5. Minutes of Panel

There are no Minutes of the Licensing and Appeals Committee, sitting as a Panel, to be reported.

#### **Matters for recommendation to the Council**

6. Feedback from Consultation Results of the Scrap Metal Dealers Policy 2024 - 2029 13 - 36

The report seeks approval of the proposed changes to the Scrap Metal Dealers Policy.

#### **Decisions to be taken under Delegated Powers**

7. Unmet Demand Survey - Hackney Carriage Vehicles 37 - 40

The report invites Members to consider the request from the Hackney Carriage and Dual drivers for an Unmet Demand Survey to be undertaken and for the results of the survey to be discussed at a future meeting.

8. Urgent Items 41 - 42

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

#### **Matters for consideration in Private**

9. Exclusion of Press and Public 43 - 44

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**PART 2 - PRIVATE**

10. Urgent Items

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Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

## **MEMBERSHIP**

Cllr C Brown (Chair)  
Cllr C J Williams (Vice-Chair)

Cllr B Banks  
Cllr M A Coffin  
Cllr A Cope  
Cllr D Keers  
Cllr D W King  
Cllr W J Mallard

Cllr R W G Oliver  
Cllr R V Roud  
Cllr M Taylor  
Cllr D Thornewell  
Cllr K S Tunstall

## **GUIDANCE ON HOW MEETINGS WILL BE CONDUCTED**

- (1) Most of the Borough Council meetings are livestreamed, unless there is exempt or confidential business being discussed, giving residents the opportunity to see decision making in action. These can be watched via our YouTube channel. When it is not possible to livestream meetings they are recorded and uploaded as soon as possible:

<https://www.youtube.com/channel/UCPp-IJISNgoF-ugSzxjAPfw/featured>

- (2) There are no fire drills planned during the time a meeting is being held. For the benefit of those in the meeting room, the fire alarm is a long continuous bell and the exits are via the doors used to enter the room. An officer on site will lead any evacuation.
- (3) Should you need this agenda or any of the reports in a different format, or have any other queries concerning the meeting, please contact Democratic Services on [committee.services@tmbc.gov.uk](mailto:committee.services@tmbc.gov.uk) in the first instance.

### **Attendance:**

- Members of the Committee are required to attend in person and be present in the meeting room. Only these Members are able to move/ second or amend motions, and vote.
- Other Members of the Council can join via MS Teams and can take part in any discussion and ask questions, when invited to do so by the Chair, but cannot move/ second or amend motions or vote on any matters. Members participating remotely are reminded that this does not count towards their formal committee attendance.
- Occasionally, Members of the Committee are unable to attend in person and may join via MS Teams in the same way as other Members. However, they are unable to move/ second or amend motions or vote on any matters if they are not present in the meeting room. As with other Members joining via MS Teams, this does not count towards their formal committee attendance.
- Officers can participate in person or online.

- Members of the public addressing an Area Planning Committee should attend in person. However, arrangements to participate online can be considered in certain circumstances. Please contact [committee.services@tmbc.gov.uk](mailto:committee.services@tmbc.gov.uk) for further information.

Before formal proceedings start there will be a sound check of Members/Officers in the room. This is done as a roll call and confirms attendance of voting Members.

### **Ground Rules:**

The meeting will operate under the following ground rules:

- Members in the Chamber should indicate to speak in the usual way and use the fixed microphones in front of them. These need to be switched on when speaking or comments will not be heard by those participating online. Please switch off microphones when not speaking.
- If there any technical issues the meeting will be adjourned to try and rectify them. If this is not possible there are a number of options that can be taken to enable the meeting to continue. These will be explained if it becomes necessary.

For those Members participating online:

- please request to speak using the 'chat or hand raised function';
- please turn off cameras and microphones when not speaking;
- please do not use the 'chat function' for other matters as comments can be seen by all;
- Members may wish to blur the background on their camera using the facility on Microsoft teams.
- Please avoid distractions and general chat if not addressing the meeting
- Please remember to turn off or silence mobile phones

### **Voting:**

Voting may be undertaken by way of a roll call and each Member should verbally respond For, Against, Abstain. The vote will be noted and announced by the Democratic Services Officer.

Alternatively, votes may be taken by general affirmation if it seems that there is agreement amongst Members. The Chairman will announce the outcome of the vote for those participating and viewing online.

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Declarations of interest

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## TONBRIDGE AND MALLING BOROUGH COUNCIL

### LICENSING AND APPEALS COMMITTEE

#### MINUTES

Wednesday, 29th November, 2023

**Present:** Cllr C Brown (Chair), Cllr C J Williams (Vice-Chair), Cllr M A Coffin, Cllr D Keers, Cllr R W G Oliver, Cllr R V Roud and Cllr K S Tunstall

**Virtual:** Councillors M D Boughton and Mrs A S Oakley participated via MS Teams in accordance with Council Procedure Rule 15.21.

Apologies for absence were received from Councillors B Banks, A Cope, W J Mallard, M Taylor and D Thornewell.

#### PART 1 - PUBLIC

##### **LA 23/21 DECLARATIONS OF INTEREST**

There were no declarations of interest in accordance with the Code of Conduct.

##### **LA 23/22 MINUTES**

**RESOLVED:** That the Minutes of the meeting of the Licensing and Appeals Committee held on 27 September 2023 be approved as a correct record and signed by the Chairman.

##### **LA 23/23 MINUTES OF PANEL**

**RESOLVED:** That the Minutes of the meeting of the Licensing and Appeals Committee sitting as a Panel held on 20 October 2023 be received and noted.

#### DECISIONS TAKEN UNDER DELEGATED POWERS

##### **LA 23/24 REVIEW OF FEES AND CHARGES 2024/25 - LICENSING FEES**

Following a review of the existing fee structure, the report of the Director of Central Services and Deputy Chief Executive set out details of the proposed licensing fees and charges for 2024/25 in respect of Hackney Carriage and Private Hire Driver Licences and Vehicle Licences, Administration Fees, Scrap Metal Dealers, Street Trading Consents, Film Classification, Sex Establishments, Boating Licences, Events Pre-Application Advice, Hypnotism Licence, Animal Welfare, Gambling and the licensing of premises and practitioners providing Acupuncture, Electrolysis and Ear Piercing, Cosmetic Piercing, Tattooing and Semi-permanent make up.

Members raised concern over the Type 1 licensing fees set by statute for which the Borough Council had no power to amend, with particular reference made to the statutory fees set under Licensing Act 2003 that had not been increased since 2005.

**RESOLVED:** That

- (1) the proposed scale of fees for licences, consents and registrations, as set out at Annex 1 to the report, be adopted with effect from the 1 April 2024, subject to the proposed fees and charges for pre-application advice in respect of larger events up to and above 1000 capacity, including cost of specialist officers and site visits, being amended to £500 for an initial meeting with normal hourly rates applying afterwards depending on officers' time required, hourly rate to be advised by the officers at the initial meeting; and
- (2) the Cabinet Member for Community Services, in liaison with the Head of Licensing, Community Safety and Customer Service, write to the Central Government to seek an explanation as to why the statutory fees set under Licensing Act 2003 had not been reviewed/adjusted since the Regulations came into force in 2005.

**LA 23/25 EXCLUSION OF PRESS AND PUBLIC**

There were no items considered in private.

The meeting ended at 8.07 pm

## TONBRIDGE & MALLING BOROUGH COUNCIL

### LICENSING & APPEALS COMMITTEE

26 March 2024

#### Report of the Interim Chief Executive

#### Part 1- Public

#### Matters for Recommendation to Council

#### 1 FEEDBACK FROM CONSULTATION RESULTS OF THE SCRAP METAL DEALERS POLICY 2024 – 2029

##### 1.1 Background

1.1.1 On the 27 September 2023 Members approved, for consultation purposes, proposed changes to the existing Scrap Metal Dealers 2019 – 2024 policy. This report asks Members to recommend to Council that the amended policy be adopted.

1.1.2 Tonbridge & Malling Borough Council currently has two site licences and seven Mobile Scrap Metal licences.

1.1.3 Metal theft over recent years has had a significant impact on communities, business, and local authorities. Metal thefts has been on the rise which is why the Scrap Metal Dealers Act 2013 was introduced in October 2013 and came into force in December 2013. It was a way to try and combat desecration of churches and historic buildings, inspection covers, and road signage being stolen.

1.1.4 The Act defines a ‘scrap metal dealer’ as a person who carries on the business which consists wholly or in part of the buying and selling of scrap metal, whether the metal is sold in the form it was bought, or carries on a business as a motor salvage operator. This does not include manufacturing operations that sell metal as a by-product of the processes being used in that operations. This includes the business of collection scrap metal, i.e., door to door collectors.

1.1.5 This policy outlines the requirements of the Scrap Metal Dealers Act 2013. This policy aims to give guidance to new applicants, existing licence holders, consultees, and members of the public as to how the Council will administer and enforce the requirements of the Act.

##### 1.2 Consultation

1.2.1 A copy of the Policy on Scrap Metal Dealers 2024 – 2029 is shown at **Annex 1**.

1.2.2 The following process steps that enabled the development of this policy are:

Draft consultation agreed at the Licensing Committee	27 September 2023
Public Consultation	9 October 2023 – 30 November 2023
Licensing Committee agrees the policy and recommends to Full Council for adoption	26 March 2024
Full Council adopt policy	9 April 2024
New Policy comes into force	22 April 2024

1.2.3 The Consultation was made available to the following stakeholders:

- Existence licence holders
- The Chief Officer of Police for Kent and British Transport Police
- the Fire and Rescue authority for Kent
- Tonbridge and Malling Borough Council's Environmental Protection Team
- Environment Agency
- Trading Standards
- Existing licence holders
- Relevant trade associations

1.2.4 Results of consultation

1.2.5 There were no representations received during the consultation period, which is very disappointing, especially receiving no responses back from existing licence holders.

### **1.3 Legal Implications**

1.3.1 The licensing of Scrap Metal Dealers Site or Mobile licences is governed by the Scrap Metal Dealers Act 2013.

### **1.4 Financial and Value for Money Considerations**

1.4.1 There are no statutory fees for Scrap Metal Dealers Site or Mobile licences. The level of fee is therefore at the discretion of the Licensing Authority,

1.4.2 The current fees for a Scrap Metal Site licence is £440 and for a Mobile Collectors Licence is £330.

## **1.5 Risk Assessment**

1.5.1 The introduction of a policy should provide a transparent and consistent basis for decision making. This in turn should reduce the risks of decisions being challenged in the Courts.

## **1.6 Equality Impact Assessment**

1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

## **1.7 Policy Considerations**

1.7.1 Crime & Disorder Reduction and Community

## **1.8 Recommendations**

1.8.1 That the proposed changes to the Scrap Metal Dealers 2024 – 2029 policy, attached as Annex 1, be approved.

Background papers:

Scrap Metal Dealers Act 2013  
Guidance for the Scrap Metal Dealers Act 2013,  
updated on the 2 March 2023

contact: Anthony Garnett  
Katie Shipman

Adrian Stanfield  
Interim Chief Executive

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# **Scrap Metal Dealers Policy**

**2024 – 2029**

**All applications will be considered on their merits, as well as against the relevant policy and statutory framework.**

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## **INTRODUCTION**

Metal theft over recent years has had a significant impact on communities, business, and local authorities. Metal thefts has been on the rise which is why the Scrap Metal Dealers Act 2013 was introduced in October 2013 and came into force in December 2013. It was a way to try and combat desecration of churches and historic buildings, inspection covers, and road signage being stolen.

This policy outlines the requirements of the Scrap Metal Dealers Act 2013. This policy aims to give guidance to new applicants, existing licence holders, consultees, and members of the public as to how the Council will administer and enforce the requirements of the Act.

## **1 CONSULTATION**

- 1.1 The Scrap Metal Dealers Policy will be kept under review and where any significant amendments are considered necessary these will only be made after consultations have taken place in accordance. Amendments required due to a change in legislation that do not impact on the aims and objectives of the Policy will be made with the approval of the Licensing Officer for the policy to remain legislatively current.
- 1.2 Proper weight, in accordance with the Guidance, has been given to the views of all those consulted. Those consulted in the preparation of this Policy included:
  - the Chief Officer of Police for Kent/British Transport Police
  - the Fire and Rescue authority for Kent
  - Tonbridge and Malling Borough Council's Environmental Protection Team
  - Environment Agency
  - Trading Standards
  - Existing licence holders
  - Relevant trade associations

### 1.3 The Scrap Metal Dealers Policy

1.3.1 The following process steps enabled development of this policy.

Draft consultation agreed at the Licensing Committee	27 September 2023
Public Consultation	1 October 2023 – 30 November 2023
Licensing Committee agrees the policy and recommends to Full Council for adoption	26 March 2024
Full Council adopt policy	9 April 2024
New Policy comes into force	22 April 2024

## 2 BACKGROUND

- 2.1 The Scrap Metal Dealers Act 2013 came into effect on 1 October 2013. It repeals all previous legislation and creates a revised regulatory regime for scrap metal recycling and vehicle dismantling industries.
- 2.2 The Act defines a 'scrap metal dealer' as a person who carries on the business which consists wholly or in part of the buying and selling of scrap metal, whether the metal is sold in the form it was bought. Or carries on a business as a motor salvage operator. This does not include manufacturing operations that sell metal as a by-product of the processes being used in that operations. This includes the business of collection scrap metal, i.e., door to door collectors.
- 2.3 The definition of scrap metal dealers is wide and may include skip hire firms, and tradesman such as plumbers and builders who sell scrap metal resulting from their businesses.
- 2.4 In these circumstances, each business will be considered on its own merits, but consideration will be given to the amount of metal sold and how incidental the sale is to the main business. So, in most cases for plumbers, electricians, and builders etc. the sale of metal will be incidental and should not require a licence. However, skips sited at demolition sites, or at engineering manufacturing sites or plumbers' yards, it is likely the skip will contain a significant amount of metal, so the skip hire company will require a licence.
- 2.5 The Act identifies the local authority as the principal regulator and gives them power to regulate these industries by ability to refuse licences to unsuitable applicants and the power to revoke those licences held by licence holders who become unsuitable.
- 2.6 The Act states that scrap metal includes.
  - Any old, waste, or discarded metal or metallic material
  - Any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life.

This definition does include platinum and other rare metals now being used in catalytic converters in vehicle exhausts.

2.7 The following is not considered to be scrap metal:

- Gold
- Silver
- Any alloy of which 2% or more by weight is attributable to gold or silver.

2.8 A dealer also includes someone carrying on the business as a motor salvage operator. This is defined as a business that:

- Wholly or in part recovers salvageable parts from motor vehicles for re-use or re-sale, and then sells the rest of the vehicle for scrap.
- Wholly or mainly buys or sells motor vehicles for the purpose of salvaging parts from them or repairing them and re-selling them.

However, only vehicles without a certificate of destruction, or are capable of being driven without repair, with or without a valid MOT are likely to be classes as second-hand goods. Other vehicles are likely to be considered scrap. These aspects will be considered when the Council determines whether or not a scrap metal dealer licence is required. It should also help prevent any motor salvage operators attempting to circumvent the legislation and its requirements.

2.9 The Act is not intended to include second hand goods. Jewellers or businesses trading in second hand gold, silver and products are not included in this legislation.

### 3 TYPES OF LICENCE

3.1 A licence is required to carry on the business as a scrap metal dealer. A licence is granted for three years. Trading in scrap metal without a licence is a criminal offence.

3.2 There are two types of licences specified within the Act: Site licence and Collector's licence.

3.3 **Site licence** – all sites operating as a scrap metal business must be licensed. Each site must have a named site manager. A site licence allows the licence holder to transport scrap to and from the site from any local authority area.

3.4 A site under the Act is defined as any premises used in the course of carrying on a business as a scrap metal dealer (whether or not metal is kept there). This means a dealer will require a licence for an office, even if they do not operate a metal store or yard from those premises.

- 3.5 **Collectors licence** – this allows the licence holder to collect scrap within the area of the issuing local authority. This licence does not permit the holder to operate a scrap metal site, nor does it allow collection outside the area of the issuing authority. If a person collects scrap from many local authority areas, a collector's licence will be required from each local authority where he/she collects scrap.

A dealer can only hold **ONE** type of licence in any one local authority.

- 3.6 Holding a site or collectors' licence does not exempt the licensee from requiring any other licence or permit to operate their scrap metal business.

#### **4 SUITABILITY OF APPLICANT**

- 4.1 The Council must determine if an applicant is a suitable person to carry on the business as a scrap metal dealer.
- 4.2 The Council may have regard to any information which it considers to be relevant, this may include:
- Whether the applicant or site manager has been convicted or any relevant offence
  - Whether the application or site manager has been the subject of any relevant enforcement action
  - Whether there has been any refusal of an application of the issue or renewal of a scrap metal licence, and the reasons for refusal.
  - Whether there has been any refusal of an application for a relevant environmental permit or registration, and the reasons for the refusal.
  - If there has been any previous revocation of a scrap metal licence and the responses for the revocation.
  - Whether the applicant has demonstrated there will be adequate procedures in place to ensure compliance with the Act.

## Making an application

The rules for completing a tax check changed on 4 April 2022 in England and Wales, and will change on 2 October 2023 in Scotland and Northern Ireland.

The new rules mean if you're an individual, company or any type of partnership you must complete a tax check if you're:

- renewing a licence
- applying for the same type of licence you previously held, that stopped being valid less than a year ago
- applying for the same type of licence you already hold with another licensing authority

You will not need to complete a tax check and you should follow the [confirm your tax responsibilities guidance](#) if you have:

- never held a licence of the same type before
- had a licence of the same type that stopped being valid a year or more before making this application

Further details can be found using the following web link.

[Complete a tax check for a taxi, private hire or scrap metal licence - GOV.UK \(www.gov.uk\)](#)

4.3 When establishing the applicant's suitability, the Council may consult with the following agencies:

- Kent Police
- Her Majesty's Revenue and Customs
- Environment Agency
- The Council's Environmental Protection Team
- Trading Standards

4.4 Relevant offences or relevant enforcement action are those listed under the Scrap Metal Dealers Act 2013 (Prescribed relevant offences and relevant enforcement action) Regulations 2013

4.5 Scrap metal dealers application can be downloaded from the Councils website at

[Scrap metal dealer's licence application – Tonbridge and Malling Borough Council \(tmbs.gov.uk\)](#)



## **5 SUPPLY OF INFORMATION BY THE LOCAL AUTHORITY**

5.1 Information supplied to the authority in relation to an application for, or relating to a scrap metal licence must be provided when requested relating to a licence to:

- Any other local authority
- Environment Agency
- An officer of a police force

This does not limit any other power the authority has to supply that information.

## **6 REGISTER OF LICENCES**

6.1 The Environmental Agency will maintain a register for scrap metal licences issued by all local authorities which in England. The register will include.

- Name of the authority that issued the licence.
- Name of the licence holder
- Any trading name of the licence holder
- Address of the site listed on the licence.
- Type of licence
- Expiry date of licence

The register will be open for inspection by members of the public.

6.2 The Council are required to update the register on a regular basis.

## **7 DISPLAY OF LICENCES**

7.1 Once granted, a copy of the site licence must be displayed at each site identified on the licence; in a prominent place which is accessible to members of the public.

- 7.2 A copy of a collector's licence must be displayed on any vehicle that is being used during a dealer's business. It must be displayed in a prominent position so that it can be easily read from the outside of the vehicle.

## **8 VERIFICATION OF SUPPLIERS IDENTITY**

- 8.1 Before receiving scrap metal, the dealer must verify a person's full name and address, by reference to documents or data from a reliable and independent source.
- 8.2 If suitable verification is not obtained the scrap metal dealer, or site manager, or person who has been delegated responsibility by the dealer or site manager for verifying the name and address, shall be guilty of an offence.

## **9 PAYMENT FOR SCRAP METAL**

- 9.1 A scrap metal dealer must only pay for scrap metal by either:
- Cheque (which is not transferable under Section 81A of the Bills of Exchange Act 1882)
  - Electronic transfer of funds (authorised by a credit and debit card)

Cash payments and payments in kind with goods and services for scrap metal are not permitted.

## **10 RECORDS**

- 10.1 Scrap metal dealers must keep three types of records:
- Receipt of Metal –
  - Disposal of Metal
  - Supplementary
- 10.2 Receipt of Metal – if metal is received during the dealer's business the following must be recorded:

- Description of the metal, including its type (types if mixed), form, condition, weight, and any marks identifying previous owners or other distinguishing features
- Date and time of receipt
- Registration mark of the vehicle it was delivered by.
- Full name and address of the person delivering it.
- Full name of the person making payment on the behalf of the dealer.

10.3 Disposal of Metal – Disposal under the Act covers metal:

- Whether or not it is in the same form when it was purchased
- Whether or not it is to another person
- Whether or not it is despatched from a site

10.4 Disposal records must be kept and include:

- Date and time of disposal
- If to another person, their full name and address
- If payment is received for the metal (sale or exchange) the price or other consideration received.

10.5 If disposal is during business conducted under a collectors licence the dealer must record:

- Date and time of disposal
- If to another person, their full name and address

10.6 Supplementary – The information collected during receipt and disposal must be recorded in such a manner that allows the information and the metal to which it relates to be easier identified.

10.7 The records of receipt must be kept for a period of three years beginning on the day of receipt of disposal.

10.8 If suitable records for the receipt or disposal of scrap metal are not kept then the scrap metal dealer or site manager, or person who has been delegated responsibility by the dealer or site manager for keeping records shall be guilty of an offence.

- 10.9 A dealer or site manager may have a defence if they can prove arrangements had been made to ensure the requirement to keep records was fulfilled, or they took all reasonable steps to ensure those arrangements were complied with.

## **11 RIGHTS OF ENTRY AND INSPECTION**

- 11.1 An authorised officer of the Council may enter and inspect a licensed site at any reasonable time, with or without notice to the site manager.
- 11.2 Entry to the site is reasonably required for the purpose of ascertaining whether the provisions of the Act are being complied with or investigating offences under it and in either case the giving of the notice would defeat the purpose.
- 11.3 Sections 11.1 and 11.2 do not apply to residential premises for mobile collectors and site licences.
- 11.4 An authorised officer of the Council is not entitled to use force to enter a premises, but may ask a justice of the peace to issue a warrant authorising entry, if they are satisfied there are reasonable grounds for entry to the premises for the purpose of:
- Securing compliance with the provisions of the Act
  - Ascertaining whether those provisions are being complied with
- 11.5 Premises under this section include licensed sites or premises that are not licensed, but there are reasonable grounds for believing the premises are being used as a scrap metal dealing business.
- 11.6 An authorised officer of the Council may use reasonable force in the exercise of the powers under a warrant obtained under section 11.4.
- 11.7 An authorised officer of the council may require:
- Production of and inspect any records kept in respect of receipt and disposal of metal.
  - Require production of and inspect any records in respect of receipt and disposal of metal and take copies or extracts from any such record.
- 11.8 An authorised officer of the Council must produce evidence of their identity and evidence of their authority to exercise these powers, if requested by the owner occupier or other person in charge of the premises.

## 12 APPLICATION PROCEDURE

- 12.1 An application form must be completed and submitted with the fee, and a basic disclosure of criminal convictions, a disclosure will be valid for three months from the date of issue.
- 12.2 A licence once granted will be valid for three years.
- 12.3 A renewal application must be received before the expiry of the current licence.
- 12.4 If a licence application is refused, the licence expires when no appeal is possible, or an appeal is determined or withdrawn.
- 12.5 A licence may be varied from one type to another i.e., site licence to collector's licence.
- 12.6 A variation licence must be made to reflect changes to the name of the licensee, site manager or sites on a site licence or name of the licensee on a collector's licence.
- 12.7 A variation cannot be used to transfer the licence to another person only amend the name of the licence holder.
- 12.8 When in receipt of a renewal application, which is subsequently withdrawn, the licence expires at the end of the day on which the application was withdrawn.
- 12.9 Tonbridge and Malling Borough Council may request additional information is provided for the consideration of the application. Failure to provide such information may result in the application being refused.
- 12.10 If Tonbridge and Malling Borough Council proposes to refuse an application, revoke or to vary a licence by imposing conditions, a notice will be issued to the licence holder setting out the Council's proposals and the reasons for the decisions. The notice will indicate details of the Licensing and Appeals panel hearing date, where the applicant or licence holder can either make written or oral representation about the proposal or inform the council that the application or licence holder wishes to do so.
- 12.11 This time must not be less than 14 days beginning on the day the notice was given to the applicant or licence holder. Tonbridge and Malling Council will stipulate a time of 21 days for representations or intentions to be received.
- 12.12 If a notification is received that the applicant or licence holder wishes to make representation, the Council must allow a reasonable period for them to make

their representation. The Council will allow 14 days for written representations to be received from the date the application becomes contested, or the Council receives notification of the applicant having a relevant offence. The applicant or licensee may wish to make an oral representation; if this is the case the person must notify the Council within the 14-day time. If this time lapses, without a written representation, or a request for an oral representation being received, the Council may refuse, revoke, or vary the licence.

- 12.13 Where there is a representation a hearing will be arranged, and the case will be presented before the Licensing and Appeals panel, the applicant or licence holder will be invited to attend. The Council will give at least ten working days' notice of the date and time of the hearing to the applicant or licence holder. Any decisions made at this hearing will be given to the application or licence holder in writing outlining the decision and the reasons.
- 12.14 An applicant or licence holder may appeal to the magistrate's court against a refusal of an application or a variation. Any appeal must be lodged with the magistrate's courts within 21 days of receipt of the decision notice.

### **13 REVOCATION AND IMPOSING CONDITIONS**

- 13.1 The Council may revoke a scrap metal licence if it is satisfied the licence holder does not carry on a scrap metal business at any of the sites named on the licence.
- 13.2 The Council may revoke a scrap metal licence if it is satisfied the site manager named on the licence does not act as a site manager at any of the named sites on the licence.
- 13.3 The Council may revoke a scrap metal licence if it is no longer satisfied the licence holder is no longer a suitable person to carry on the business.
- 13.4 If the licence holder or site manager named on a licence is convicted of a relevant offence the Council may impose one or both of the following conditions
- The dealer must not receive scrap metal except between the hours of 9am and 5pm on any day.
  - All Scrap metal must be kept in the form in which it was received for a specified period not exceeding 72 hours, beginning with the time it was received.
- 13.5 A revocation or variation only comes into effect when no appeal under the Act is possible or when such appeal has been determined or withdrawn.

- 13.6 If the Council considers the licence should not continue without the addition of one or more conditions in section 13.4 the licence holder will be given notice that until the revocation comes into effect the licence is subject to one or both conditions or that a variation comes into immediate effect.

#### **14 CLOSURE OF UNLICENSED SITES**

- 14.1 If an authorised officer of the council is satisfied premises are being used by a scrap metal dealer during their business and premises are unlicensed, they may issue a closure notice. A copy of this notice will be given to the person who appears to be the site manager and any person who appears to be in charge, manager or other officer of the business.
- 14.2 A copy of this notice may also be given to any person who has an interest in the business, a person who occupies part of the premises, or where the closure may impede a person's access to other parts of the premises.
- 14.3 After a period of seven days, the authorised officer of the Council may apply to a justice of the peace for a closure order. The Court must be satisfied the premises will continue to be used by a scrap metal dealer, or there is a reasonable likelihood that the premises will be. A closure order will close the premises immediately and the premises will remain closed to the public until the Council makes a termination of the closure order by certificate. The scrap metal dealer must cease their business immediately. It will require the defendant to pay a sum into the court, which will not be released until the person has complied with the requirements of the order.
- 14.4 Such an order may have a condition relating to the admission of people into the premises or may include a provision the court considers appropriate.
- 14.5 A copy of the order must be placed on the premises in a prominent position by the Council.
- 14.6 Once the requirements of the order have been complied with and the Council is satisfied the need for the order has ceased, a certificate may be made. This ceases the order and the sum of money paid into the court is released.
- 14.7 A copy of the certificate must be given to any person the closure order was made against and a copy must also be given to the court and placed on the premises. A copy must also be given to anyone who requests one.
- 14.8 Anyone issued with a closure order may complain to a justice of the peace. The Court may discharge the order, if it is satisfied there is no longer a need for the closure order. The Council may be required by the Court to attend and answer the complaint made.

- 14.9 Appeals may be made to the Crown Court against closure order, decisions not to make a closure order, a discharge order or the decision not to make a discharge order. Any appeal must be lodged within 21 days beginning on the day on which the order or decision was made.
- 14.10 A person is guilty of an offence if they allow the premises to open in contravention of a closure order.
- 14.11 An authorised officer of the Council may enter the premises at any reasonable time to ensure compliance with the order. They may use reasonable force if necessary.
- 14.12 An authorised officer of the Council must produce evidence of their identity or evidence of their authority to exercise the powers under the Act if requested to do so.

## **15 ENFORCEMENT**

- 15.1 It is the policy of Tonbridge and Malling Borough Council to ensure that scrap metal dealers are licensed correctly and carry out their trade in accordance with both the relevant law and the conditions (if any) attached to the licences.
- 15.2 Any enforcement action has regard for the Regulators' Compliance Code and the regulatory principles set out in the Legislative & Regulatory Reform Act 2006. The Council will seek to adopt a positive and proactive approach towards ensuring compliance.
- 15.3 All enforcement action, be it verbal warnings, the issue of written warnings, appearance before the Licensing and Appeals committee or prosecution, will primarily be based upon the seriousness of the breach and the possible consequences arising out of it. Enforcement action will not, therefore, constitute a punitive response to minor technical contraventions of legislation.
- 15.4 Authorised officers, when making enforcement decisions, will abide by this policy. Any departure from the policy must be exceptional, capable of justification, be fully considered and be endorsed by the Head of Service for Licensing, Community Safety and Customer Services or above before the decision is taken (unless it is considered that there is significant risk to the public in delaying the decision).
- 15.5 Officers will be authorised by the Head of Service for Licensing, Community Safety and Customer Services to take enforcement actions relevant and appropriate to their level of competence. Competency will be assessed individually by reference to qualifications and experience.



- 15.6 Achieving and maintaining a consistency of approach to making all decisions that concern Scrap Metal licensing and enforcement action, including prosecution, is of paramount importance. To achieve and maintain consistency, it is vital that the policy guidelines are always considered and followed where appropriate.
- 15.7 Enforcement decisions must always be consistent, balanced, and proportionate and relate to common standards which ensure that the public is adequately protected. In reaching any decision many criteria must be considered including the: -
- seriousness of any offences.
  - consequence of non-compliance.
  - likely effectiveness of the various enforcement options.
  - the economic consequences of enforcement
  - danger to the public.
- 15.8 Having considered all relevant information and evidence, the choices for action are:
- take no action.
  - take informal action.
  - revoke a licence.
  - vary a licence by way of including conditions on the licence.
  - use simple cautions.
  - prosecute.
  - a combination of any of the above.
- 15.9 The decision to prosecute is a very significant one as it may impact on the licence holder's future employability. Prosecution will, in general, be restricted to those circumstances where the law is blatantly disregarded, legitimate requirements of the Council are not followed and / or the public is put at serious risk. Such circumstances are, however, in a minority. It is important that the criteria on which a decision to prosecute is made provide common standards which ensure a consistent approach.
- 15.10 The circumstances which are likely to warrant prosecution may be characterised by one or more of the following: -
- where there is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law-abiding are placed at a disadvantage to those who disregard it.
  - where there have been repeated breaches of legal requirements.
  - where a particular type of offence is prevalent.

- where a particular contravention has caused serious public alarm.

15.11 When circumstances have been identified which may warrant a prosecution, all relevant evidence and information must be considered, to enable a consistent, fair, and objective decision to be made.

15.12 Before referring a matter to the Legal Section for possible prosecution, the Head of Service for Licensing, Community Safety and Customer Services must be satisfied that there is relevant, admissible, substantial, and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction; a bare prima facie case is not enough. With insufficient evidence to prosecute, the issue of a simple caution is not an alternative.

15.13 In addition to being satisfied that there is sufficient evidence to provide realistic prospect of conviction, it must be established that it is in the public interest to prosecute. The Code for Crown Prosecutors, issued by the Crown Prosecution Service, provides guidance which will be considered, including relevant public interest criteria.

15.14 When a decision is being taken on whether to prosecute, the factors to be considered may include: -

- the seriousness of the alleged offence.
- the risk or harm to the public.
- identifiable victims.
- disregard of safety for financial reward.
- the previous history of the party concerned.
- offences following a history of similar offences.
- failure to respond positively to past warnings.
- the credibility of any important witnesses and their willingness to cooperate.
- the willingness of the party to put right the loss or harm that has occurred,
- whether a prosecution would have a significant positive impact on maintaining community confidence.
- whether other action, such as issuing a simple caution in accordance with the Home Office Circular 016. /2008 would be more appropriate or effective.

15.15 This list is not exhaustive, and regard will be had to the matters set out in the Code for Crown Prosecutors.

15.16 A simple caution may be used as an alternative to a prosecution in certain circumstances.

15.17 The purposes of the simple caution are: -

- to deal quickly and simply with less serious offences where the offender has admitted the offence.
- to divert offenders where appropriate from appearing in the criminal Courts.
- to reduce the chances of re-offending
- To safeguard the suspected offender's interests, the following conditions should be fulfilled before a caution is administered: -
- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction.
- the suspected offender must have made a clear and reliable admission of the offence.
- the suspected offender must understand the significance of a simple caution and give informed consent to being cautioned.
- A simple caution must be appropriate to the offence and the offender.

15.18 If there is insufficient evidence to consider taking a prosecution, then by implication, the above criteria is not satisfied for the use of a simple caution. A simple caution should not be used where the suspected offender does not make a clear and reliable admission of the offence. (It should be noted that there is no legal obligation for any person to accept the offer of a simple caution and no pressure should be applied to the person to accept a caution).

15.19 Where a person declines the offer of a simple caution, it will be necessary to consider taking alternative enforcement action. Whilst this will usually mean prosecution, this is not necessarily inevitable. For example, it may be considered that a written warning would be appropriate.

15.20 Following the completion of an investigation into a complaint or any enforcement activity, the licence holder will be informed of the action intended to be taken.

15.21 Any written documentation issued or sent will: -

- contain all the information necessary to understand the offence and what needs to be done to rectify it. Where works are required, the period allowed for them to be completed will be indicated.
- indicate the legislation or conditions contravened and measures which will enable compliance with the legal requirements and point out, where appropriate, that other means of achieving the same effect may be chosen.
- clearly indicate any recommendations of good practice under an appropriate heading, to show that they are not a legal requirement.

15.22 There is a clear distinction between legal requirements and matters which are recommended as good practice. Recommendations in all enforcement action, even if only giving verbal advice, is vitally important.

## TONBRIDGE & MALLING BOROUGH COUNCIL

### LICENSING & APPEALS COMMITTEE

26 March 2024

#### Report of the Interim Chief Executive

#### Part 1- Public

#### Delegated

### 1 UNMET DEMAND SURVEY - HACKNEY CARRIAGE VEHICLES

#### 1.1 Executive Summary

1.1.1 Over the last few years, the number of licensed hackney carriage vehicles working out of Tonbridge Waterloo rank has grown resulting in very long waiting times queuing on the rank waiting for a fare. As of the 12 March 2024 Tonbridge & Malling currently has 173 hackney carriage vehicles licensed.

1.1.2 The last occasion the Licensing and Appeals Committee discussed an Unmet Demand Survey was on the 19 March 2014.

#### Number of Hackney Carriage Vehicles

Date	19 Mar 14	18 Dec 19	8 Mar 21	14 Mar 22	13 Mar 23	12 Mar 24
Notes	Last review of HCV numbers	Before Lockdown	Roadmap Step 1			
Number	180	179	140	139	144	173

#### Number of drivers

Date	19 Mar 14	18 Dec 19	8 Mar 21	14 Mar 22	13 Mar 23	12 Mar 24
Notes	Last review of HCV numbers	Before Lockdown	Roadmap Step 1			
Hackney Carriage Drivers	169	99	79	66	64	61
Dual Drivers	112	178	165	162	175	197
Private Hire Drivers*	247	456	402	372	359	366
Total	528	733	646	600	598	624

\*Private Hire drivers do not take part in an Unmet Demand Survey

1.1.3 The neighbouring Licensing Authorities of Tunbridge Wells Borough Council and Maidstone have a fixed limit as to the number of Hackney Carriage Vehicles that are allowed to be licensed. Sevenoaks District Council does not have a restriction; however, you need a station permit to work on the main Sevenoaks Station rank.

- 1.1.4 The situation at Waterloo Road is further exacerbated by the economic climate where drivers are working longer hours and some hackney carriage vehicles are being worked longer with multiple drivers.
- 1.1.5 Before a Licensing Authority can restrict the number of hackney carriage vehicles to be licensed a detailed robust survey has to be commissioned to determine to assess hackney carriage services throughout the Borough.
- 1.1.6 To gauge opinion from the current licensed hackney carriage drivers and dual badge holders a Teams survey was set up asking stakeholders if they would like an Unmet Demand Survey to be undertaken. It was clearly pointed out to all respondents of the questionnaire that this survey would have to be paid for by the hackney carriage and dual drivers through their fees.
- 1.1.7 The survey was hosted on the Teams software, enabling all drivers to immediately respond via their mobile phones / laptop. As of the 12 March 2024 the licensing team have received back 57 (25.56%) responses from 223 that were sent out. 45 (79%) want a survey to be commissioned against 12 (21%) who do not.

Survey	Sent out	Returned	%	Want a survey	%	Do not want a survey	%
2014	223	57	25.56%	45	79%	12	21%
2024*	261	51	19.54%	35	68.6%	15	29%

\*One Private Hire driver responded who could not take part in an Unmet Demand Survey

## 1.2 Background

- 1.2.1 Under the Transport Act 1985, Local Authorities are only able to limit the number of Hackney Carriage Proprietors licences issued if there is no '*significant unmet demand*'. The existence of the concept of 'significant unmet demand' must be determined through robust statistical analysis as any decision to limit the number of licences may be open to detailed scrutiny by the Courts should the Committee's decision be challenged. Such surveys are normally conducted every three/four years.
- 1.2.2 A refusal to grant a Hackney Carriage Proprietor's licence, on the grounds of the numbers of Hackney Carriages within the area could only be justified if the Council could demonstrate that there is no significant demand which remains unmet for Hackney Carriage vehicle services.
- 1.2.3 Significant unmet demand is made up of two components:
- Patent demand – which is directly observable from observing queues and waiting time and the ranks; and

- Latent demand – calculated using data from the rank observations and public attitude information gleaned from the survey.

### **Unmet Demand Survey**

1.2.4 The key elements of an Unmet Demand Survey are to:

- Review of relevant policies:
- Extensive rank observations and audits
- On street interviews
- Consultation
- Benchmarking against other authorities

1.2.5 The research will focus on:

- customer need and expectation
- the existence and significance of unmet demand
- service quality
- safety
- vehicle types
- vehicle designs
- accessibility

1.2.6 Target groups include:

- customers
- potential customers
- individuals
- groups
- organisations on whom the hackney carriage service impacts
- managers with whom the hackney carriage trade interacts.

### **Cost of an Unmet Demand Survey**

1.2.7 A survey could cost between £14,000 - £17,000 to be completed and will have to be paid out of future fees. This would result in an additional fee being added to all Hackney Carriage Vehicle, Hackney Carriage Drivers and Dual driver applications.

Examples of current additional fees charged by TWBC (HCV £30 a year) and Maidstone (HCDB /Dual Driver £24 for 3 years; HCV £24 every year).

1.2.8 As an example, if it is then decided to implement a lower cap than the current 171 vehicles, it could take some years to bring that number down to the recommended cap.

1.2.9 If we undertake an "Unmet Demand Survey" and limit is set, we will then have to commission another survey every three years.

### **1.3 Legal Implications**

1.3.1 Under the Transport Act 1985, Local Authorities are only able to limit the number of Hackney Carriage Proprietors licences issued if there is no '*significant unmet demand*'. The existence of the concept of 'significant unmet demand' must be determined through robust statistical analysis as any decision to limit the number of licences may be open to detailed scrutiny by the Courts should the Committee's decision be challenged.

### **1.4 Financial and Value for Money Considerations**

1.4.1 A survey could cost between £14,000 - £17,000 to be completed and will have to be paid out of future fees. This would result in an additional fee being added to all Hackney Carriage Vehicle, Hackney Carriage Drivers, and Dual driver applications.

### **1.5 Risk Assessment**

1.5.1 There are no relevant issues.

### **1.6 Equality Impact Assessment**

1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

### **1.7 Recommendations**

1.7.1 That the Licensing and Appeals Committee considers the request from the Hackney Carriage and Dual drivers for an Unmet Demand Survey to be undertaken and that the results of the Survey be discussed at a future meeting.

Background papers:

contact: Anthony Garnett

Nil

Adrian Stanfield  
Interim Chief Executive



# Agenda Item 8

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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# Agenda Item 9

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**ANY REPORTS APPEARING AFTER THIS PAGE CONTAIN EXEMPT  
INFORMATION**

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# Agenda Item 10

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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