



Committee report

Committee	LICENSING SUB COMMITTEE
Date	31 AUGUST 2016
Title	TO DETERMINE AN APPLICATION FOR A HACKNEY CARRIAGE VEHICLE LICENCE FOR A FORD TOURNEO FOR MR PETER WALL
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BACKGROUND

1. In accordance with the Town Police Clauses Act 1847 it is a requirement that in order to be used as a taxi a vehicle must have a Hackney Carriage Vehicle (HCV) licence issued by the Council.
2. In May 2006 a full review of the council's hackney carriage and private hire licensing requirements was carried out following a full consultation exercise, and after having regard to the latest Best Practice Guidance issued by the Department for Transport. The Council resolved at that time to adopt revised conditions including one that required any new hackney carriage vehicle (HCV) from 6 February 2007 and any replacement vehicle to be silver in colour. It was believed that a colour requirement would assist the public in identifying licensed HCVs, which can ply for hire from a rank or be hailed in the street, as distinct from Private Hire Vehicles (PHVs) which can only be pre-booked. PHVs can be any colour other than silver.
3. The conditions were reviewed in 2015 when the main requirements relating to vehicles were incorporated into a policy document for hackney carriage and private hire licensing. It retained the requirement for all new and replacement HCVs to be silver.
4. Mr Peter Wall is the proprietor of Bembridge & Harbour Taxis, and currently has 2 licensed HCVs and 2 licensed PHVs. Mr Wall first approached the Licensing Section in April 2015 with a view to applying for a Hackney Carriage Licence for the vehicle which is the subject of this application, a Ford Tourneo, registration number HW13 FUV. Officers viewed the vehicle and were of the opinion that, even though the registration document (V5) states the vehicle colour as 'Silver', the vehicle in reality looks gold in colour and the public could get confused as to whether the vehicle is a HCV or PHV. Mr Wall was therefore advised that should an application be submitted for a HCV licence it would be refused due to its colour, but that officers would be prepared to licence it as a PHV (which can be any colour other than silver). Mr Wall made the decision to licence it as a PHV and it remains as a currently licensed PHV.

5. On 27 July 2016 Mr Wall submitted an application for the proposed vehicle, to replace a currently licensed Hackney Carriage Vehicle, a silver Ford Galaxy registration number HW07 EUU (Appendix A).
6. Mr Wall was reminded of the Council's current policy for new and replacement vehicles and informed that his proposal would not be in accordance with the colour requirements of the policy, and therefore officers would not use delegated authority to issue a HCV licence, but would refer the application to the Licensing Committee for determination.
7. Mr Wall has been asked to bring the vehicle to the hearing for members to see it in order to assist in making a decision.

CONSULTATION

8. This application requires no consultation with other agencies.

FINANCIAL/BUDGET IMPLICATIONS

9. Broadly, Council expenditure on licensing matters, and specifically those administered and enforced through Regulatory Services, balances income generated from fees.

LEGAL IMPLICATIONS

10. Section 4.3 of the policy states "a replacement vehicle will only be considered if it is;
 - A substantial improvement on the existing vehicle,
 - Available for a full inspection by the Licensing Department"
11. Section 4.4 states "the replacement vehicle must comply with all relevant standards and criteria detailed within this policy".
12. The policy states at Section 4.5 "if the existing licensed vehicle has been licensed as a wheelchair accessible vehicle the replacement vehicle must also be wheelchair accessible". Neither the existing vehicle nor the proposed replacement vehicle are wheelchair accessible.
13. Section 5.4 of the current Policy states that in some circumstances officers may refer an application to the Licensing Committee for a decision.

Implications under the Crime and Disorder Act 1998

14. Members are advised that without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Human Rights

15. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.

16. There are two convention rights, which need to be considered in this context:

- Article 6 - Right to a Fair Trial

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

It has been held that the fact that there is a right of appeal in this case to the Crown Court from the Licensing Authority's decision is sufficient to make the Council's licensing system compliant with the convention rights.

EQUALITY AND DIVERSITY

17. The council as a public body is subject to general and specific duties under equality and diversity legislation and as such has a duty to go beyond prohibition and publish and promote service improvements by engaging with the local community to assess the impact of any decision on the local community. As a requirement under the Equality Act 2010 and further improvements to diversity legislation all local authorities are required to impact assess their services, policies/strategies and decisions with regard to diversity legislation – race, disability, gender, age, sexual orientation and religion/belief. (NB: this list is not exhaustive, it does cover current legislation but future development could also include poverty and social inclusion as an example).
18. There is no requirement for an equality impact assessment to be carried out on this application however, should there be a deviation in policy/precedent set then it may be necessary to review the Equality Impact Assessment for potential positive or negative effects on the protected characteristics.

OPTIONS

- Option 1: To grant a Hackney Carriage Vehicle Licence for the proposed vehicle as a replacement vehicle.
- Option 2: To refuse to grant Mr Wall a Hackney Carriage Vehicle licence for the proposed vehicle.

RISK MANAGEMENT

19. With regard to Option 1: To allow this vehicle to be granted a HCV licence by way of a replacement vehicle would not be in accordance with the current Council policy. It could set a precedent and encourage similar requests from other proprietors. It may require the Council's policy to be reviewed.
20. With regard to Option 2: If the application is refused Mr Wall would have the right of appeal. Appeals against the refusal to grant a Hackney Carriage vehicle licence are to the Crown Court.

EVALUATION

21. Each application for a Hackney Carriage vehicle licence must be considered on its own merits, having regard to the current policy.

22. To grant a new licence for this vehicle may cause issues with other taxi proprietors who may have sought advice regarding the appearance of a vehicle and been informed that a licence would be refused based on the colour of the vehicle.
23. The applicant, in the letter accompanying his application, has requested sight of the colour charts used by the Licensing Section when making decisions on whether to licence a vehicle (Appendix B). It would not be practical to adhere rigidly to manufacturers' colour charts when making a decision, as such charts are intended as a guide only, and officers would wish to view a vehicle before making a decision.
24. The colour chart in the Ford Tourneo brochure shows two shades of silver – Tectonic Silver and Moondust Silver. The Tectonic Silver looks gold when compared to the Moondust Silver. However, the brochure states that “the images used are to illustrate body colours only and may not reflect the vehicle described. Colours and trims reproduced in this brochure may vary from the actual colours, due to the limitations of the printing processes used.” Officers believe that the vehicle looks gold, despite ‘silver’ being stated in the V5 document, and believe that a decision should be made based on the public’s perspective, and consideration given to whether the vehicle could be mistaken for a PHV (especially as it is currently licensed as a PHV).
25. The Committee should consider whether to grant a hackney vehicle licence for the proposed vehicle.

RECOMMENDATION

26. The Committee are requested to determine whether to grant a Hackney Carriage vehicle licence to Mr Wall. Officers recommend that the vehicle is not licensed as a Hackney Carriage as it is ‘gold’ in appearance.

APPENDICES ATTACHED

- [Appendix A](#) Application for a Hackney Carriage Vehicle Licence
[Appendix B](#) Letter from Mr Wall

BACKGROUND PAPERS

Hackney Carriage and Private Hire Licensing Policy dated 15 March 2015

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