

# Public Document Pack

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## MID DEVON DISTRICT COUNCIL

### REGULATORY SUB COMMITTEE B

**A MEETING** of the **REGULATORY SUB COMMITTEE B** will be held at Exe Room, Phoenix House on Monday, 2 October 2017 at 1.30 pm

#### **STEPHEN WALFORD**

Chief Executive

22 September 2017

**Councillors:** Mrs F J Colthorpe, D R Coren and L D Taylor

### **A G E N D A**

**MEMBERS ARE REMINDED OF THE NEED TO MAKE DECLARATIONS OF INTEREST PRIOR TO ANY DISCUSSION WHICH MAY TAKE PLACE**

**1 Apologies and Substitute Members**

To receive any apologies for absence and notices of appointment of Substitute Members (if any).

**2 Chairman - Election**

To elect a Chairman for the meeting.

**3 Hearing to consider an application for a Hackney Carriage Vehicle Licence (Pages 3 - 24)**

The Sub Committee to determine, in the light of the application, the current policy in place and the case presented by the applicant, whether the vehicle should be licensed with this authority.

**4 Hearing to determine whether or not an applicant is fit and proper to hold a Hackney Carriage / Private Hire Driver Licence (Pages 25 - 42)**

The Sub Committee to decide, in light of the information set out within the report and the response of the applicant, whether or not the individual is considered fit and proper to hold a licence with this authority.

During discussion of this item it may be necessary to pass the following

resolution to exclude the press and public having reflected on Article 12 12.02(d) (a presumption in favour of openness) of the Constitution. This decision may be required because consideration of this matter in public may disclose information falling within one of the descriptions of exempt information in Schedule 12A to the Local Government Act 1972. The Committee will need to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption, outweighs the public interest in disclosing the information.

## **ACCESS TO INFORMATION ACT – EXCLUSION OF THE PRESS AND PUBLIC**

**RECOMMENDED** that under section 100A(4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act, namely information relating to an individual.

If you would like a copy of the Agenda in another format (for example in large print) please contact Julia Stuckey on:

Tel: 01884 234209

E-Mail: [jstuckey@middevon.gov.uk](mailto:jstuckey@middevon.gov.uk)

Public Wi-Fi is available in all meeting rooms.

**REGULATORY SUB COMMITTEE**  
**2 October 2017**

**A HEARING TO CONSIDER AN APPLICATION FOR A HACKNEY CARRIAGE VEHICLE LICENCE**

**Cabinet Member(s):** Colin Slade  
**Responsible Officer** Jackie Taylor, Licensing Officer

**REASON FOR REPORT:** An application has been received by the licensing department to licence a Hackney Carriage vehicle. The Hackney Carriage & Private Hire Policy in place states that a new licence will not normally be granted if the vehicle is over 5 years old. The vehicle in question is 21 years and 271 days old at the time of application.

**RECOMMENDATION:** That the Sub Committee decides, in the light of the application, the current policy in place and the case presented by the applicant, whether the vehicle should be licensed with this authority.

**Relationship to Corporate Plan:** N/A

**Financial Implications:** The potential cost of defending an appeal in the courts.

**Legal Implications:** The applicant has a right of appeal if he is unhappy with the decision made.

**Risk Assessment:** In the event of a successful appeal the Council could be liable for costs. Additionally, the Council should only licence individuals considered 'Fit and proper'.

**Equality Impact Assessment:** The general public sector equality duty within the Equality Act 2010 has overarching application and requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- Advance equality of opportunity within and between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not.

When carrying out any of its functions, the Council must comply with this duty.

## 1.0 INTRODUCTION

- 1.1 Mid Devon District Council is responsible for licensing the Hackney Carriage and Private Hire trade in Mid Devon. The Local Government (Miscellaneous Provisions) Act 1976, as amended, and the Town Police Clauses Act 1847, provides much of the regulatory framework for this licensing regime.
- 1.2 The authority has adopted a Hackney Carriage and Private Hire Policy, the most recent version of which came in to effect on 29 February 2016. The policy provides the framework for the administration of the service and sets out how the Council will consider applications. The policy can be viewed here <https://www.middevon.gov.uk/business/licensing/licensing-policies/> and a copy will be available to view at the hearing.
- 1.3 As part of this policy the authority has adopted five key aims and objectives which underpin the licensing process. Two of these are particularly relevant to this application and they are:
- Vehicle safety, comfort and access
  - Environmental protection
- 1.4 Generally speaking, newer vehicles have fewer miles and tend to be in better, safer condition, being fitted with more recent safety features. Furthermore, the engine management systems and emission are more efficient and environmentally friendly.
- 1.5 For these reasons this council has implemented age limits for new vehicles in the past. Since April 2010 all new vehicles had to meet Euro Standard 3 (vehicles registered after January 2000) and this increased in April 2011 to Euro Standard 4 (vehicles registered after January 2005).
- 1.6 From April 2014 it was decided, in conjunction with the trade, that all new vehicles would be no more than 5 years old. This means that all new licenced vehicles would now meet a minimum of Euro 5 standard. This was a rolling age limit from the date of first registration and this 5 year limit is in place at the moment. It should be noted that grandfather rights are provided to vehicles with existing licences (i.e. renewals).
- 1.7 The policy does allow exceptions to be made, and this is important as the Council must be flexible, act reasonably, consider the individual merits of each case and not fetter its discretion. Exemptions are highlighted in the policy for limousines, classic vehicles with specific use and wheelchair accessible vehicles. Furthermore Hackney Carriage and Private Hire Licensing Policy states the following in terms of new vehicles over 5 years old:

*Where a new application has been submitted to licence a vehicle over 5 years old, the application may be referred to a licensing regulatory sub-committee for consideration. (Paragraph 6.5.1)*

*The presumption is that licences will not be granted for vehicles over 5 years old, but each case will be considered on its own merits. Should an application of this kind be referred to a sub-committee the applicant would be expected to present a case as to why an exception should be made. (Paragraph 6.5.2)*

*Exemptions to the above 5 year limit may be provided to limousines, classic vehicles with specific use and wheelchair accessible vehicles. Grandfather rights will be provided to vehicles with existing licences. (Paragraph 6.5.3)*



- 1.8 When exercising this flexible policy the sub-committee may also wish to consider that the council has a wider statutory duty to protect air quality under the Local Air Quality Management regime and air pollution from road transport is a priority Public Health issue, diesel vehicles including older taxis are proportionately higher emitters of air pollutants. The following table has been produced from RAC data and shows the testing criteria for vehicles.

Emissions standard	Applied to all new registrations from	Carbon monoxide (CO)	Hydrocarbons + Nitrogen oxides (HC+NOx)	Nitrogen oxides (NOx)	Particulate matter (PM)
Euro 1	31December 1992	2.72g/km	0.97g/km	-	0.14g/km
Euro 2	1 January 1997	1.00g/km	0.70g/km	-	0.08g/km
Euro 3	1 January 2001	0.64g/km	0.56g/km	0.50g/km	0.05g/km
Euro 4	1 January 2006	0.50g/km	0.30g/km	0.25g/km	0.025g/km
Euro 5	1 January 2011	0.50g/km	0.23g/km	0.18g/km	0.005g/km
Euro 6	1 September 2015	0.50g/km	0.17g/km	0.08g/km	0.005g/km

## 2.0 THE APPLICATION

- 2.1 The application was submitted by Mr Benjamin Fajardo - Martinez on 3<sup>rd</sup> July 2017. A copy of it is attached as Annex 1. At the time of application the vehicle was 16 years and 271 days over the 5 year age limit.
- 2.2 The vehicle is a Black diesel Carbodies Fairway Taxi, probably better described as a “London Black Cab” and is capable of carrying 5 passengers.
- 2.3 The vehicle was first registered in 1995 and is therefore euro standard 1. The vehicle will be more polluting in comparison with vehicles meeting the tighter Euro 5 standard emission standard based on the measured pollutants.
- 2.4 The vehicle is accessible for wheelchairs and a front swivel seat allows access for disabled passengers.
- 2.5 The vehicle passed an MOT on 28<sup>th</sup> June 2017 and also passed a Taxi test on 28 June 2017. The vehicle test document shows the mileage at that time as 467,751 miles. The vehicle MOT test is attached as Annex 2. The Vehicle Taxi Test is attached as Annex 3.
- 2.6 Mr Fajardo-Martinez has been asked to ensure the vehicle is available for the Committee to inspect, should they wish, at the time of the hearing. He has also provided an outline as to why he believes the vehicle should be licensed and this is attached as Annex 4.
- 2.7 Photos of the vehicle are attached as Annexes 5 – 9.
- 2.8 For Members information, the hearing has been slightly delayed because the applicant has been away on holiday.

### **3.0 SUMMARY OF LEGISLATION**

- 3.1 Section 37 of the Town Police Clauses Act 1847 and Section 47 of the Local Government (Miscellaneous Provisions) Act 1976 contains the powers a local authority has in relation to the licensing of Hackney Carriage vehicles. The power to issue a Hackney Carriage licence is discretionary, not mandatory. The Mid Devon District Council Policy sets out the conditions in which it believes a Hackney Carriage vehicle could be granted with regards to a vehicles age (See Paragraph 1.4 to 1.7 above).
- 3.2 A Council may attach conditions to a licence should they consider them to be reasonably necessary. Current conditions set by this authority include the frequency of vehicle tests required (every 6 months), the requirement to report accidents and some general vehicle requirements.
- 3.3 Should the Council refuse a licence the applicant has the right of appeal to the Crown Court. An applicant may also appeal if they are aggrieved by any condition specified in a licence however, this appeal would be made to the Magistrates Court.

### **4.0 RECOMMENDATION**

- 4.1 It is recommended that after careful consideration of this report and hearing from Mr Martinez, the sub-committee decide whether to:
- a) Grant Mr Fajardo-Martinez a Hackney vehicle licence in respect of the Black Carbodies Fairway Taxi
- OR
- b) Refuse Mr Fajardo-Martinez a Hackney vehicle licence in respect of the Black Carbodies Fairway Taxi
- 4.2 The Sub Committee must give reasons for the decision they have made, making clear that that it is based on the individual merits of the application. They may like to consider and make reference to the following points (in addition to anything else they believe to be relevant):
- The Policy in place (reasons for departing / not departing from it)
  - The case made by the applicant
  - The type of vehicle being considered
  - The condition of the vehicle and whether it has passed relevant tests
  - Any safety features the vehicle has
  - The mileage of the vehicle
  - The emissions standard of the vehicle
  - The type of work that is likely to be carried out in the vehicle

### **5.0 TIMESCALES**

- 5.1 Members are asked to make their decision on the day of the hearing.

### **ANNEXES TO THIS REPORT**

Annex 1: The Application  
Annex 2: Vehicle MOT document  
Annex 3: Vehicle Taxi Test document  
Annex 4: Response from the applicant  
Annexes 5 - 9: Photos of the vehicle  
Annex 10: Order of play for the hearing

<b>Contact for any more information</b>	Jackie Taylor (01884 244619) Licensing Officer
<b>Background Papers</b>	MDDC Policy and Conditions for Hackney and Private Hire
<b>File Reference</b>	Taxis/Hearings
<b>Circulation of the Report</b>	Applicant Sub-Committee

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**Licensing Authority**  
**Mid Devon District Council**

Phoenix House, Phoenix Lane  
 Tiverton, Devon EX16 6PP  
 Tel: 01884 244617/8/9

**Application for a Hackney Carriage Licence**

New ☒ Renewal ☐ Transfer ☐ Temporary Vehicle ☐

CHECKLIST:	
I have enclosed	Please tick ✓ yes
• A completed vehicle test certificate from one of the garages authorised by this Council to provide the test (if applicable)	✓
• Current MOT (if applicable)	✓
• Valid insurance documents showing cover for use as a hackney carriage.	<del>✓</del>
• Vehicle Registration Document (if applicable)	✓
• Made or enclosed payment of the appropriate fee for the application. Cheques made payable to Mid Devon District Council.	✓
• Expired Plate (if applicable)	

FOR OFFICE USE ONLY		HACK-ES5507218
Licence payment - £ 194.00	Cash / Chq / Card	Receipt No. 04/22860
Licence No.	Date Granted:	Date Expires:

~~\*~~ To be provided after approval. please.

1. Your personal details			
Title (please circle)	<input checked="" type="radio"/> Mr <input type="radio"/> Mrs <input type="radio"/> Miss <input type="radio"/> Ms <input type="radio"/> Other (please state)		
Surname	FAJARDO - MARTINEZ		
Forenames	BENJAMIN		
Address	[REDACTED]		
Email	[REDACTED]		
Postcode	[REDACTED]		
Telephone No.		Mobile No.	[REDACTED]
Will the owner drive the vehicle or employ drivers? (Please tick)		Owner	
		Employ	
		Both	<input checked="" type="checkbox"/>

2. Vehicle Details			
Plate No		Registration Letters and Numbers	[REDACTED]
Make	CARBONLES	Model	FAIRWAY
Cubic Capacity of Engine	2664cc	Year of Manufacture	1995
Seating Capacity Exclusive of Driver	FIVE (5)	Type of Body	TAXI
Colour of Vehicle	BLACK	Means of Conveyance for Light Luggage	Boot
Is the vehicle accessible for wheelchairs? (Please circle)			<input checked="" type="radio"/> Yes <input checked="" type="radio"/> No
Does the vehicle have a swivel seat for disabled passengers? (Please circle)			<input checked="" type="radio"/> Yes <input checked="" type="radio"/> No

### 3. Declaration

I am aware that it is an offence to knowingly or recklessly make a false statement or omit any required information in this form. I understand that a false statement may render me liable to prosecution and / or affect the consideration of this application.

I have checked the answers given in this application and to the best of my knowledge and belief they are correct.

I have read and understood the licence conditions that will be attached to the licence.

In the event of a licence being granted I undertake to observe and abide by the conditions applicable to the licence at all times.

Information disclosed on this form may be revealed to other agencies and bodies for the purpose of preventing or detecting crimes.

Signature		Date	03/07/2017.
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This Authority is under a duty to protect the public funds it administers, and to this end may use the information you have provided on this form for the prevention and detection of crime. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes.





Driver & Vehicle  
Standards  
Agency

## MOT Test Certificate

MOT Test Number 345181422330	Vehicle Registration Mark K7BFM	Vehicle Identification Number SCRF3B3MXSC083238
Make CARBODIES	Model TAXI/HIRE CAR	Colour Black
Issuer's Name K. B. KERSLAKE	Test Class 4	Country of Registration Great Britain
Expiry Date 27 June 2018 (EIGHTEEN)	Issued 28 Jun 2017	Test Station V102892

### Odometer Reading and History

28 6 2017: 467751 mi  
21 12 2011: 467639 mi

### Inspection Authority

WEST EXE MOTORS LTD  
UNIT 26  
MOUNTBATTEN WAY  
TIVERTON  
EX16 6SW  
01884 252170

### Additional Information

To preserve the anniversary of the expiry date, the earliest you can present your vehicle for test is 28 May 2018.

### Signature of Issuer

[Redacted Signature]

### Advisory Information

RECEIVED

- 3 JUL 2017

PHOENIX HOUSE RECEPTION

*mm*

### About this document

- 1 This document is a receipt style certificate telling you that an MOT Test pass result has been recorded in the Driver & Vehicle Standards Agency's (DVSA's) database of MOT Test results; this can be verified at [www.gov.uk/check-mot-status](http://www.gov.uk/check-mot-status).
  - 2 A test certificate relates only to the condition of the components examined at the time of test. It does not confirm the vehicle will remain roadworthy throughout the validity period of the certificate.
  - 3 Check carefully that the details are correct.
  - 4 Whilst advisory items listed above do not constitute MOT failure items, they are drawn to your attention for advice.
  - 5 For further information about this document, please visit [www.gov.uk/getting-an-mot](http://www.gov.uk/getting-an-mot) or contact DVSA on 0300 123 9000\*.
- \*Your call may be monitored or recorded for lawful purposes.





Licensing Department, Phoenix House, Phoenix Lane, Tiverton, Devon,  
EX16 6PP. Tel: 01884 244617/8/9 Email: licensing@middevon.gov.uk

- 3 JUL 2017

PHOENIX HOUSE RECEPTION

### HACKNEY CARRIAGE / PRIVATE HIRE VEHICLE INSPECTION RECORD

Vehicle make: <u>Carbodies</u>	Vehicle model: <u>TXI</u>	Reg No. <span style="background-color: black; color: black;">[REDACTED]</span>
Specify if the vehicle is a private hire or hackney carriage: <u>HACKNEY</u>		
Plate No.	Engine cc: <u>2664</u>	Mileage: <u>467751</u>
Colour: <u>Black</u>	No. of passenger seats:	Date of test: <u>28<sup>th</sup> June 2017</u>
Name of vehicle owner: <u>Mr. B. Fajardo - Martinez</u>		

If any of the following testable items fail, you must inform the Mid Devon District Council Licensing Team immediately.

Does the vehicle meet at least the pass standards set out in the VOSA publication 'The MOT Inspection Manual - Car and Light Commercial Vehicle Testing' ISBN 0-9549239-0-1?		<input checked="" type="radio"/> Yes	<input type="radio"/> No		
Testable item & sub section reference no. for inspection standards manual	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Testable item & sub section reference no. for inspection standards manual	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Electrical Wiring and Equipment (1.9)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhaust System (7.1)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Additional Lamps (1.9)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Fuel System - Pipes & Tanks (7.2)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Steering Control - Steering Wheel (2.1)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mirrors and view to rear (8.1)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Steering Control - Steering Column (2.1)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Windscreen - View to the Front (8.3)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Suspension Spring Units & Linkage (2.4)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Window Glass or Other Transparent Material (8.5)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Tyres and Road Wheels (4.1)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Transmission (10.1)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vehicle Body and Condition - Exterior (6.1)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Oil Leaks (10.2)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vehicle Body, Security & Condition - Interior (6.1)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Luggage / Load Space (10.3)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bumper Bars (6.1)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	MDDC Licence Plates (10.4)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Doors and Seats (6.2)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Trailers & Towbars (10.5)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NOTE: ADDITIONAL LAMPS (1.9) - ONLY HACKNEY CARRIAGE VEHICLES WILL HAVE 'FOR HIRE' ROOF SIGNS			Wheelchair Restraint & Access Equipment (11.1)	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Additional information (for example, reasons for any failures):**

**Declaration**

I am an authorised Department of Transport Tester/Inspector and I have carried out a vehicle test on this vehicle. The vehicle has (circle the result):

**PASSED / FAILED**

**Signed:**



**Name in BLOCK CAPITALS:**

**K.B. KERSHAW**

**Name of Garage:** West Exe Motors Ltd  
Tiverton, Devon



EX16 6SW  
Tel: (01884) 252170  
Vat Reg No. 384 9335 14

**Authentication Stamp:**



West Exe Motors Ltd  
Tiverton, Devon  
EX16 6SW  
Tel: (01884) 252170  
Vat Reg No. 384 9335 14

**FOR ADVICE ON ANY OF THE ABOVE PLEASE CONTACT MID DEVON DISTRICT COUNCIL LICENSING TEAM**

**Reference Document: 'Mid Devon District Council Licensed Vehicle Testing Standard, 2013'**



Thomas Keating

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From: [REDACTED]  
Sent: 04 July 2017 21:38  
To: Licensing  
Subject: [REDACTED]

On Tuesday, 4 July 2017, 21:23, [REDACTED]

On Tuesday, 4 July 2017, 21:03, [REDACTED]

Dear Tom

Further to our telephone conversation today, I can confirm that the vehicle [REDACTED] that I presented to be license as a Hackney Carriage Vehicle, will be use in punctual occasions (not as an averyday taxi).

One of the reasons that I applied fo a licence is due to the fact that the car doesn't exist as a private vehicle on terms of insurance, since that model was purposely build as a hackney carriage vehicle making it almost impossible to insure for private use. I can include this vehicle on my taxi fleet insurance policy with immediate effect.

The vehicle has passed the Taxi Test and MOT with flying colours and not advisory items and regarding to MDDC Licensing Department for the licence to be granted based on the exeption of accessible vehicle (wheelchair and swivel seat)

I've been restoring the car for the last 4/5 years to bring it to its glorious days as a "London black cab" and I'll be using it for special occasions for example proms, weddings etc. and the odd day at the various ranks within MDDC.

Hoping to hear from you soon

Regards

Ben























<u>ORDER OF PLAY</u>	<u>NOTES</u>
<p><b>1. Chair:</b> State the reason for the hearing:</p> <ul style="list-style-type: none"> <li>• To consider an application for a Hackney Vehicle Licence</li> </ul>	
<p><b>2. Introductions of:</b></p> <ul style="list-style-type: none"> <li>• The sub-committee</li> <li>• Legal advisor</li> <li>• Member services officer</li> <li>• Mid Devon District Council officers</li> </ul>	
<p><b>3. Members' Interests:</b> Any to declare?</p>	
<p><b>4. Chair:</b> Time limits for speakers?</p> <p>No time limit will be set</p>	
<p><b>5. Introductions of:</b></p> <ul style="list-style-type: none"> <li>• The applicant – Mr Benjamin Fajardo Martinez</li> <li>• Any person aiding / representing him</li> </ul>	
<p><b>6. Chair:</b> Public or private session?</p> <p>Recommended at this stage to be held in <b><u>Public</u></b></p>	

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of the Local Government Act 1972.

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