

REGULATORY SUB COMMITTEE

DATE OF HEARING: 28 March 2019 at 14:00 (Exe Room, Phoenix House)

A HEARING TO CONSIDER AN APPLICATION FOR A PRIVATE HIRE VEHICLE LICENCE

Cabinet Member(s): Colin Slade (Community Well Being)

Responsible Officer Simon Newcombe, Group Manager for Public Health and Regulatory Services

REASON FOR REPORT:

An application has been received by the licensing department to licence a Private Hire 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 was 5 years, 8 months and 25 days at the time of application.

RECOMMENDATION:

The Officer recommends that the application be granted. Further information about this recommendation can be seen in section 4 of this report.

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.

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 This Authority has adopted a Hackney Carriage and Private Hire Policy, the most recent version of which came in to effect on 1 January 2019. The Policy provides the framework for the administration of the service and sets out how the Council will consider new applications, renewals and also matters relating to existing licence holders. The Policy can be viewed at the link below and copies will also be available at the hearing:

<https://www.middevon.gov.uk/business/licensing/licensing-policies/>

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 emissions 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 act reasonably, consider the individual merits of each case and not fetter its discretion. The Hackney Carriage and Private Hire Licensing Policy states the following in terms of new vehicles over 5 years old:

Maximum Age of Vehicles

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. The applicant would be expected to present a case as to why an exception should be made. (Paragraph 6.5.2)

2.0 THE APPLICATION

2.1 The application was submitted by Mr Yildiray Kekilli on 12 March 2019. A copy of the application is attached as Annex 1. At the time of application, the vehicle was 5 years, 8 months and 25 days at the time of application.

2.2 The vehicle is a Citroen Berlingo and was first registered on 16 June 2013. The vehicle is therefore Euro 5 compliant.

2.3 The vehicle is wheelchair accessible and as of 12 March 2019, had done 10,987 miles.

2.4 The vehicle passed an MOT on 24 January 2019 and also passed the Mid Devon District Council vehicle test on 12 March 2019. For Members information, the MOT history of the vehicle is attached as Annex 2. The vehicle test is attached as Annex 3.

2.5 The applicant was asked to provide information as to why the application should be granted and they have mentioned the following points:

- The vehicle is wheelchair accessible and will be used for this purpose, along with school runs when necessary
- The vehicle has only 10, 000 miles on the clock (approximately)
- The vehicle has recently passed a vehicle test
- It is being plated as a Private Hire vehicle, not a Hackney Carriage vehicle (meaning it would not be parked on the rank etc.).

2.6 The applicant can elaborate on these points at the hearing and Members may ask any questions they have.

2.7 In addition to the above, the applicant has also provided some pictures of the vehicle and these are attached as Annex 4, 5 and 6.

3.0 SUMMARY OF LEGISLATION

3.1 Section 48 of the Local Government (Miscellaneous Provisions) Act 1976 contains the powers a local authority has in relation to the licensing of Private Hire vehicles. The

power to issue a Private Hire vehicle licence is discretionary, not mandatory and the Mid Devon District Council Policy sets out the conditions in which it believes a licence can be granted, including the vehicles age (See Paragraph 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 Magistrates Court. An applicant may also appeal if they are aggrieved by any condition specified in a licence.

4.0 OFFICER RECOMMENDATION

- 4.1 The licensing officer recommendation is completed prior to the hearing itself and as such, it must be noted that further information may become available to the sub-committee that the licensing officer has not considered.
- 4.2 The licensing officer recommendation does not prevent the sub-committee from making its own decision, based on the individual merits of the case.
- 4.3 The licensing officer believes that in this case, the Hackney Carriage and Private Hire Policy should be departed from, and the licence should be granted. What follows is an overview of the rationale for this recommendation.
- 4.4 The vehicle has significantly low mileage for its age. According to Department for Transport statistics, the average mileage for a vehicle in England is 7,800 miles per year (2017). For its age, this particular vehicle would therefore be expected to have an approximate mileage of 42, 900 miles. It has done 31,913 miles less than this figure.
- 4.5 Additionally, although statistics are not collected regarding the annual mileage of licensed vehicles, it is suggested that such vehicles would do significantly more miles than those reflected in the Department for Transport figures.
- 4.6 In relation to potential emission levels, the vehicle, although over 5 years old, is Euro Standard 5 compliant.
- 4.7 The application is for a private hire vehicle licence and although conditions cannot be placed on the licence requiring it to be used for specific journeys only (i.e. those requiring a wheelchair accessible vehicle), the applicant has stated that this will be its use, along with certain school runs. The fact that a hackney carriage licence is not being applied for ensures that the vehicle cannot pick up from the rank and cannot be hailed in the street.

4.8 The vehicle appears to have passed all previous MOT's without issue, which indicates it has likely been well maintained and also passed the Council's vehicle test recently, without any additional comments.

4.9 Based on the above, the licensing officer believes that a departure from policy is appropriate and can be justified in this particular case.

5.0 DECISION MAKING

5.1 It is recommended that after careful consideration of this report, Mid Devon Policy, the officer comments and hearing from Mr Kekilli, the sub-committee decide whether to:

a) Grant a private hire vehicle licence

OR

b) Refuse a private hire vehicle licence

5.2 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

5.3 An 'order of play' for the hearing is attached as Annex 7.

6.0 TIMESCALES

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

6.2 The applicant has 21 days to appeal against the decision to the Magistrates Court following receipt of a notice from the local authority which sets out the decision made and accompanying reasons.

ANNEXES TO THIS REPORT

- Annex 1: Copy of application form
- Annex 2: MOT history
- Annex 3: Copy of vehicle test
- Annex 4 - 6: Pictures of vehicle
- Annex 7: Order of play for hearing

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Circulation of the Report: Legal / Regulatory Sub-Committee / licence holder