

# Cheltenham Borough Council

## Licensing Sub-Committee – 6 April 2022

### Application for a Hackney Carriage Vehicle Proprietor's Licence

#### Report of the Senior Licensing Officer

#### 1. Executive Summary and Recommendation

- 1.1 The matter before Members is a little complicated as it reflects a situation not envisaged or discussed in the legislation. The Local Government (Miscellaneous Provisions) Act 1976 refers to the grant of a vehicle licence and stays silent on other application types.
- 1.2 In practical terms there are usually 3 types of vehicle licence application: a new application, a renewal and a replacement.
- 1.3 Where the council brings in a newly adopted policy that places new/ amended requirements on a vehicle proprietor - new applications must meet the policy quite quickly but there will be a transitional period to allow for existing licence holders to meet any new requirements by renewing their existing vehicle or replace it 'on a like for like basis' until the end of transitional period.
- 1.4 A new application must meet all requirements of the council for such an application when it is made to the council.
- 1.5 A renewal or replacement application will usually benefit from 'continuity rights' in respect of an existing licence during the transitional period and this will be detailed in the policy itself.
- 1.6 Members are asked to consider whether they would grant a potential vehicle renewal, where the proprietor 'swapped' their vehicle on its last renewal in order that it was licensed as a private hire vehicle to meet the then planned WAV policy implementation.
- 1.7 The details of this case are included at ANNEX 1. The applicant intends to cancel the Private Hire vehicle licence currently on this vehicle and renew the 'original' hackney carriage vehicle licence.
- 1.8 The applicant believes that with the then planned implementation of the WAV policy he was effectively unable to renew/ replace the vehicle when it expired and explains that in ANNEX 2.
- 1.4 The sub-committee is asked to consider the matter and determine whether to:-
  - a) It gives delegated authority to officers to grant an application for a late renewal (as if it was a made on renewal) or
  - b) Decide not to recognise any continuity rights and refuse to provide such delegated authority for an application where the vehicle does not comply with current policy, such as it not being a WAV.

## 1.5 Implications

- 1.5.1 Legal There is a right of appeal against a refusal to grant a licence which, in the first instance, is to the Magistrates' Court.

**Contact officer: One Legal**  
**E-mail: [legalservices@tewkesbury.gov.uk](mailto:legalservices@tewkesbury.gov.uk)**  
**Tel no: 01684 272015**

## 2. Background

- 2.1 Permission is sought to make an application for a Hackney Carriage Vehicle Proprietor's licence (a HCV licence) for a vehicle that was not renewed as a HCV in September 2021 when it expired. The applicant swapped the vehicle to a private hire vehicle (PHV) at that time.
- 2.2 Where an individual holds a HCV licence it is usually incumbent on them to renew that licence before their existing licence expires, to benefit from any 'continuity rights' that they may have given to them in having that existing licence. They may 'renew' the existing vehicle or replace it with a new vehicle under the transitional arrangements.
- 2.3 The council had previously adopted a policy that non Wheelchair Accessible Vehicles (WAVs) would no longer be licensed as hackney carriages from 1<sup>st</sup> January 2022. This meant that non – WAVs could have been replaced with non – WAVs or simply renewed, but the new licence would not expire beyond 31<sup>st</sup> December 2021. After that date all hackney vehicles were required to be WAVs.
- 2.4 On 21 September 2021 the council decided not to complete that process. The council decided that saloon type (non WAV) Vehicles could continue to be licensed, pending the approval of a new and yet to be decided policy.
- [https://www.cheltenham.gov.uk/news/article/2588/cheltenham\\_pursues\\_climate\\_ambition\\_and\\_improved\\_accessibility\\_for\\_taxis](https://www.cheltenham.gov.uk/news/article/2588/cheltenham_pursues_climate_ambition_and_improved_accessibility_for_taxis)
- 2.5 Prior to that decision being made in September, it would be fair to say that following submissions by members of the licensed trade during the course of 2021 that there was some hope for license holders that the council would change its policy and not continue with the WAV requirement or would delay the final implementation date. The trade had been badly affected by the ongoing pandemic and representations had been to that effect.
- 2.6 It would have been reasonable to surmise that the policy *may* have been changed/ delayed by the council during the course of 2021. Although there was no confirmation from the council or licensing officers that that would happen. Council representatives were meeting representatives of the trade from the early summer to discuss the WAV implementation. **In this instance there is no evidence that the applicant was specifically made aware of a possible change in council policy by council offices when he renewed in September 2021.**
- 2.7 The Licensing Team has recently been approached by a number of vehicle proprietors since the council changed direction and did not decide to implement the requirement for all hackney vehicles to be WAV from 1<sup>st</sup> January 2022. They have made representations that the uncertainty surrounding the implementation of the WAV policy and the detrimental impact of the pandemic placed them in an invidious situation in respect of their licence renewals when they were due in 2021 or 2020.
- 2.8 They argue that uncertainty led them to choose not to renew and in some cases they disposed of that (previously) licensed vehicle. They argue they could not invest in a WAV at that point and so felt they had no option but to let their licence lapse or swap to private hire as in this instance.

- 2.9 In this instance, the applicant felt his best option was to swap the vehicle to a private hire vehicle and obtain a private hire operator’s licence. His vehicle licence would have only been renewed as a hackney for 3 months at that point, he would have been given a partial refund in 2022, but he would then have had to make a new vehicle application in 2022 at additional cost.
- 2.10 After the recent council decision, he now asks for a new licence to be granted on the same basis that it would have been if he had renewed that licence when it originally expired.
- 2.11 For such a decision to be justifiable, if Members are minded to approve such a potential application it would mean that the licence holder would then be in the same position as if they made such an application when their previous licence expired.
- 2.12 Members are asked whether the failure to highlight a possible change of course by the council on implementing the WAV policy justifies effectively allowing a late renewal.
- 2.13 Existing HCV licence holders usually *renew* the licence before it expires and this guarantees continuity of licence in such situations. In this instance, the applicant had swapped his vehicle to Private Hire use before his previous licence expired.
- 2.14 The legislation is silent on the idea of swapping a vehicle from hackney carriage to private hire and back again.

### **3. Policy Considerations**

- 3.1 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the licensee/applicant and the risks to the safety and comfort of the public.
- 3.2 Each case will be decided on its own merits. The authority will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.
- 3.3 The overriding consideration is the safety of the public. Any vehicle application must meet the usual requirements of an application, in any event, such as meeting the council’s age policy, provision of a valid MOT and council fitness test. It is felt there is no risk to public safety in connection with this matter.
- 3.4 The council has adopted a local policy to reflect the manner in which it will carry out its licensing responsibilities under the hackney carriage and private hire legislation. The sub - committee must have regard to this policy in making its decision, but it may depart from it where it is considered appropriate to do so. If the sub – committee do depart from it they should provide cogent reasons for doing so.
- 3.6 The original council policy permitted replacement and/ or renewal of non – WAVs provided they did not expire after 31<sup>st</sup> December 2021, during the transitional period prior to that previously planned date for the provision of a fully WAV licensed hackney fleet.
- 3.7 The council has not yet produced a new vehicle policy and will consult fully on it prior to adoption. However, where reasonable reasons are given to the council a non – WAV is currently permitted to be replaced like for like provided it is Euro 6 or better in terms of emissions and a renewal of such a vehicle is currently permitted, until a new policy is implemented.

### **4. Licensing Comments**

- 4.1 **The licensing sub-committee has recently allowed renewal/ replacement of a small number of hackney carriage vehicle licences, where Members felt a reasonable case had been made to them, in relation to uncertainty about the implementation of the WAV policy.**

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**Report Author**

**Contact officer:** Jason Kirkwood  
**E-mail:** [licensing@cheltenham.gov.uk](mailto:licensing@cheltenham.gov.uk)  
**Tel no:** 01242 264159

**ANNEX 1**

**Case Specifics**

**Name of applicant: MR ANDREW BOYD**

**Previously HCV licence number: HCV189**

**Date previous licence last expired: 13.09.21**

**The applicant is seeking an in principal decision to renew his original hackney carriage vehicle licence and he will then surrender his private hire vehicle licence (that he swapped to on the expiry of the hackney carriage licence).**

## ANNEX 2

### Copies of communication between the applicant and the Licensing Team around the time of the expiry of the 'original' hackney carriage licence.

Following a conversation this morning I'm emailing to question the requirement to change my licence due to the implementation of the WAV requirement.

As my licence was due for renewal in September 2021 I was told I could either renew for three months as hackney189 and then change in December or re licence as private, as I was led to believe that the WAV would be implemented in December I saw no point in processing two application and so licensed as private hire.

As a hackney I was a sole trader, as private hire I had to either work for an operator or register as an operator which incurred additional costs. The WAV ruling hasn't been implemented and as such I should still be able to use my vehicle (as plenty of other drivers are) as a Hackney carriage. Is there anything that can be done about this?

Sent via BT Email App

**From:** Licensing@cheltenham.gov.uk  
**Subject:** Options for HCV / PHV  
**Date:** Aug 12, 2021 at 12:15 PM  
**To:** andrew boyd  
**Cc:** No data  
**BCc:** No data

Good morning,

During our conversation today 12/08/2021 you confirmed that you want to licence your current HCV189, reg MX63 URR as a Private Hire Vehicle (PHV). You do not want to licence a Wheelchair Accessible Vehicle.

You can either:

- 1) Apply to licence this vehicle as a PHV from your expiry date 13/09/2021. We would licence your vehicle as a PHV for 1 year from 13/09/2021. If you wish to do this, you will need to complete a new PHV application online: [https://www.cheltenham.gov.uk/info/39/licences\\_-\\_taxi\\_and\\_private\\_hire/157/private\\_hire\\_and\\_taxi\\_vehicle\\_licences](https://www.cheltenham.gov.uk/info/39/licences_-_taxi_and_private_hire/157/private_hire_and_taxi_vehicle_licences)
- 2) Renew your HCV as normal, using the online renewal link you should have received by email. You will be charged the full £232 renewal fee, and your licence will be limited to 31 December 2021. In December, we will review all of the expiring HCV licences, and look to reimburse an appropriate amount. If you want to then change to private hire, you will need to make a new PHV application (and pay new application fees). We expect to contact all December – expiring HCVs and provide guidance on this nearer the time.

We look forward to hearing from you.

Kind regards,