

Cheltenham Borough Council

Licensing Sub-Committee – 3rd November 2022

Application for a Hackney Carriage Vehicle Proprietor's Licence

Report of the Licensing Team Leader

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 application, and decide whether they would treat it as a renewal/ replacement application notwithstanding that the existing licence has lapsed or would treat it as new application and so it would be required to meet all requirements for such applications.
- 1.7 The details of this case are included at ANNEX 1. A specific vehicle is not given, as the applicant needs to ascertain the stance of the council and whether he will benefit from continuity rights prior to his next purchase.
- 1.8 The applicant believes that uncertainty regarding the implementation of the WAV policy meant that he was unable to renew/ replace the vehicle when it expired and explains that in ANNEX 2.
- 1.9 Members allowed some discretion in respect of similar cases in January 2022. However, Members made it clear that such discretion would not be engaged unless the vehicle proprietor concerned had already made contact with the Licensing Team prior to their determination of the cases i.e. 5th January 2022. The proprietor concerned has been asked for detailed and comprehensive evidence to explain the reasons that they did not make contact with the team until August 2022. This is attached at Appendix 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 new vehicle when it is made in due course by treating it effectively as a late renewal with a change of vehicle (as if it was a replacement application 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
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 new vehicle (in this report the term 'new vehicle' will not necessarily mean a brand new vehicle, but will refer to a vehicle that is not currently licensed and which the applicant wishes to licence).
- 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 1st 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 31st 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
- 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.
- 2.7 The Licensing Team had been approached by a number of vehicle proprietors after the council changed direction and did not decide to implement the requirement for all hackney vehicles to be WAV from 1st January 2022. They 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 argued that uncertainty led them to choose not to renew and in some cases they disposed of that (previously) licensed vehicle. They argued they could not invest in a WAV at that point and so felt they had no option but to let their licence lapse.

- 2.9 After the council decision last year, they asked to for a new licence to be granted to them on the same basis that it would have been if they had renewed that licence and sought a replacement of it when it originally expired.
- 2.10 It was suggested that the application would be considered as a replacement of the previously licensed vehicle and that any new grant would be granted with effect from the previous expiry date. This 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.
- 2.11 Members are asked whether that uncertainty about the implementation of the WAV policy last year justifies a departure from council policy and whether they believe it appropriate to effectively allow a very late renewal/ replacement, where the vehicle proprietor seeks to licence a new vehicle.
- 2.12 **However, in this case they must consider whether there are sufficient grounds to depart from their previous view regarding the point that such a proprietor should have contacted licensing prior to January 2022. The proprietors reasons are laid out at Appendix 2.**
- 2.13 Existing HCV licence holders usually *renew* the licence before it expires and this guarantees continuity of licence in such situations.
- 2.14 Where an existing HCV licence holder wishes to *change* their vehicle during the currency of that licence or when it is due to expire, the licence holder may seek to *replace* the existing vehicle with a new vehicle.
- 2.15 The legislation is silent on the idea of a replacement vehicle application, and yet this is a process that most if not all councils follow to allow a change of vehicle whilst protecting the continuity of licence from that existing vehicle.

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 council policy permitted replacement and/ or renewal of non – WAVs provided they did not expire after 31st 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. Decision

4.1 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 new vehicle when it is made in due course by treating it effectively as a late renewal with a change of vehicle (as if it was a replacement application made on renewal) or
- b) Decide not to recognise any continuity rights because of the lateness in contacting the council in respect of this matter 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.

Report Author

Contact officer: Jason Kirkwood
Licensing Team Leader
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 264159

ANNEX 1

Case Specifics

Name of applicant: Mr Aditya Rai

Previously HCV licence number: HCV073

Previous vehicle registration number: HE57 NNA

Uniform case reference number (internal use only): 20/00458/HACKVA

Date previous licence last expired: 21.02.21

Previous vehicle: Mercedes C220

New vehicle details: to be confirmed on application

The applicant is seeking an in principal decision regarding whether he will benefit from continuity rights on the application for a new vehicle or be required to purchase a WAV