

Cheltenham Borough Council

Licensing Committee – 3rd April 2024

Application for a Hackney Carriage Vehicle Proprietor's Licence – Bailey PHV451

Report of the Team Leader Licensing

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. The council brought in the policy for all hackney carriages to be wheelchair accessible vehicles (WAVs) and 31st December 2021 was the final date by which existing saloon vehicle proprietors had to change their vehicle to a WAV or to go down the private hire route.
- 1.4 A new application for a hackney carriage licence must meet all current requirements of the council for such an application and that means it is required to be a WAV.**
- 1.5 A renewal and some replacement applications will usually benefit from 'continuity rights' in respect of an existing licence until they must comply with a policy. Currently vehicle policy is being reviewed, and so that situation may change in the future.
- 1.6 The case before Members is that of a current private hire vehicle proprietor who wishes to change his vehicle to a hackney carriage. He wishes to replace his current vehicle with a newer vehicle, which is not a WAV, but licence this new vehicle as a hackney carriage. He has stated that he only changed to a private hire vehicle due to the then policy of the council that all hackneys must change to WAVs. Members are asked to consider whether they would grant a potential new vehicle application, and decide to depart from policy by not requiring it to be a WAV as stated in the current policy.
- 1.7 The only potential justification for this would be to consider that discretion should be given, in this case as a saloon vehicle was licensed as HCV063 until 1st August 2020, notwithstanding that the council changed its vehicle policy in September 2021. A number of vehicle proprietors were allowed to replace/ renew vehicles in similar situations, but they made those requests in a much more timely fashion. However, this request is made relatively much later.**
- 1.8 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 in respect of his previous saloon hackney vehicle prior to his next purchase.
- 1.9 The applicant believes that the then implementation of the WAV policy meant that he was unable to renew/ replace the vehicle with a WAV when it expired and details his request in ANNEX 2, where he explains his situation.
- 1.10 It has been explained that the council previously allowed some discretion in respect of such cases,

but only in limited circumstances and predominantly (with only one exception) where the council was contacted about the vehicle concerned promptly after the council announced a change in policy around September 2021, and before the Licensing Committee determined a number of such cases in January 2022.

1.11 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.

1.12 **Legal Implications** 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@onelegal.org.uk

2. Background

2.1 Permission is sought to make a new 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 - 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 then 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 when 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, they asked 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 Existing HCV licence holders usually *renew* the licence before it expires and this guarantees continuity of licence in such situations.
- 2.11 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. However, for a saloon vehicle this is only permitted in exceptional circumstances and where that licence is still in force.
- 2.12 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 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 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 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 Whilst the council consider reviewing its vehicle policy, 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.
- 3.8 The situation in this case is slightly different in that HCV063 expired 1st August 2020, and Mr Bailey licensed a private hire vehicle from 10th February 2020. He wishes to reinstate plate HCV063 and use a saloon as a hackney carriage again.

4. Licensing Comments

- 4.1 The council has received other similar requests for a late renewal/ replacement of a vehicle, in similar circumstances, but officers have confirmed the policy of the council in line with the decision and comments about similar cases arising after the committee heard cases in January 2022. However, this situation is different as explained in the report.
- 4.2 The council will need to be convinced that the vehicle proprietor has strong and convincing reasons for not having contacted the council previously and further that the case justifies a departure from policy. The licence holder first contacted the council regarding this matter in December 2023.
- 4.3 Members may wish to consider the reasons that the hackney carriage was not renewed/ replaced at the relevant time and whether the council's then vehicle policy drove that change. They may wish to also consider the reasons Mr Bailey did not pursue this matter previously and finally whether the move away from hackney work to private hire was easily reversible until this time.

Report Author

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

ANNEX 1

Case Specifics

Name of applicant: Mr Simon Bailey

Previously HCV licence number: HCV063

Previous vehicle registration number: RK64 KUJ

Uniform case reference number (internal use only): 19/02378/HACKVA

Date previous licence last expired: 01/08/2020

Previous vehicle: Mercedes E Class

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

ANNEX 2

From: Simon Bailey
Sent: 21 November 2023 13:56
To: Jason Kirkwood
Subject: Hackney Licence No: 63 (Currently PHV452)

Jason

Good afternoon,

Cheltenham Borough some time ago decided upon W.A.V. and to that extent when I changed my car from an E-Class estate to a GLE I moved across to PHV on my vehicle.

I'm still HCD657 on my personal licence.

Now some years later drivers appear to still be putting on silver saloons and estates that are not WAV compliant.

If due to the various impacts of Covid and cost of living crisis we are still able to put on Silver vehicles that are not W.A.V. would the council consider letting me have my Hackney Licence 63 back to place on a silver vehicle, I'm getting ready to make another change of vehicle again next year and would very much like a silver vehicle and my Hackney plate back, I was very fond of having my Hackney Plate and it helped driving in and around London.

I feel I've missed out somewhat on peak earning times of Hackney carriages having made the decision to keep with what was purported as the NEW - W.A.V. only, Silver only Hackney plate.

I look forward to hearing from you.

Warmest regards,
--
Simon Bailey PHV452

21/03/24

Jason

Good afternoon,

Please advise where/what room on 03 April the meeting is due to take place so I may attend and at what time so I may be there in plenty of time. If this could be printed off and sent to the members for consideration at the meeting, I would be much obliged.

Following on from our conversation on 19 March you asked for a little more info, see below the only thing I can add is in paragraph 3.

-		Last updated 22 March 2024
---	--	----------------------------

I'm writing to request my Hackney plate 063 back for my car to place on a newer vehicle in silver. As you know I'm still registered as a Personal Hackney driver number 0657.

I only moved to Private Hire as I understood I could not add a newer vehicle if it wasn't W.A.V. My vehicle required a change in and around February 2020 and W.A.V. was due to commence in December 2020. At the time I needed to change my vehicle it was not proving cost effective to buy a suitable Hackney vehicle and then within 7-8 months change it again for a W.A.V. vehicle. We understood that everyone who wasn't Private Hire had to change. Move some 3 years on and that doesn't appear to be the case.

I was unaware until very recently that W.A.V's had been abandoned for the Cheltenham Hackney Fleet. Living in Bishops Cleeve, now having a Private Hire plate and not partaking in the Echo the local paper and not going to Hackney ranks for interaction with other drivers, I was unaware of the change in the years following COVID. However, as I was coming out of the dog walking field (Grange Field, Bishops Cleeve) I noticed a silver estate car with a Cheltenham Hackney carriage plate on the back, this led me to make further enquiries and discover that WAV's had been postponed, this was only towards end of November 2023. As I haven't held a Hackney car plate since COVID I don't get to talk to other drivers on the rank, so I wasn't aware. I then contacted the licensing department hence my e-mail sent in 21 November and subsequent e-mail 04 December, making an appeal both in 2023. Which as you now say needed to be updated - this I have done.

Had I known about 5 drivers regaining their licences in late 2021 I would have added my name to the group. Though doubtful I would have been financially able to make the change following the COVID lock-downs and the massive downturn in income. As I was Private Hire and not Hackney, I missed out severely as most of the businesses that I deal with went to zoom calls and Microsoft teams calls rather than business travel. It took over 2 years for that to return and in the interim I could have done with a Hackney Plate.

I find that losing my Hackney Plate has cost me dearly, going back to a Hackney plate would generate more income and give me greater working flexibility, something I've missed since the start of COVID in 2020. As Private Hire I've been unable to access ranks or hackney lanes in and around Cheltenham and it also works for London lanes. This has placed me at a disadvantage as other drivers from Tewkesbury and Cotswold area have been able to use Hackney vehicles that can get through the road network quicker than I can, customers are therefore more likely to want to use their services.

However, due to the financial climate I will still want to work in a more settled way. My wife and I cannot afford to live off just our pensions. Apart from which I will wish to continue working I like my customers. I may have to cut out the business customer but will be more than happy to take 'private' business customers on both business and pleasure trips.

Affordability for 2-3 vehicles is out of the question. Afterall, I can only drive one at a time and my wife cannot use a second vehicle as we can no longer gain insurance cover to add a person such as a wife/partner. My wife also has issues and holds a disabled badge so she needs to have her own specific vehicle for her own needs. That would then necessitate three vehicles far too much for one household.

I do like the larger quality vehicles as can be seen from those I've purchased and had tested and registered. My chosen vehicle size can take a travel folding wheelchair or walking aid so I'm part way there.

However, I do need a top of the range vehicle for those customers who wish a chauffeur driver to take them to airports, meetings and sporting events. With a hackney plate I can use appropriate taxi lanes I can also as I get older supplement with flag downs or ranks. I feel that sticking to the rules as I have, I've lost out on thousands of pounds of business since I changed from my various e-class Mercedes to Mercedes GLE and now Mercedes GLS. They have all been premium vehicles and they have been kept scrupulously clean and tidy.

I would welcome your assistance in this matter.

I look forward to hearing from you.

Warm regards,

Simon Bailey Car at present: PHV452