

Cheltenham Borough Council

Licensing (Misc.) Sub - Committee – 18th June 2024

Request to revert to saloon vehicle from WAV – Mr Rogers – HCV198

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.
- 1.4 When the council brought in the policy for all hackney carriages to be wheelchair accessible vehicles (WAVs) from 31st December 2021, it gave a transitional period to provide for **existing** saloon vehicle proprietors to transition to the then new policy requirements more easily.
- 1.5 During that transitional period this vehicle proprietor suffered significant mechanical failure with his vehicle around January 2021, and he needed to replace it urgently to continue working. The individual decided to replace his then saloon vehicle with a WAV in anticipation of the then council requirement that all hackney carriages would be WAV from 31st December 2021. It would have made no sense to replace his saloon with another saloon for less than a year's use before having to replace it with a WAV.
- 1.6 This proprietor had licensed a vehicle under this plate number since 2007, and throughout that period it had been a saloon type vehicle.
- 1.7 The council decided to stop the implementation of the fully WAV hackney fleet as it was then planned around September 2021. This was due to concerns around the financial impact of the Covid 19 pandemic on the hackney trade, concerns about the sustainability for the trade of continuing with that specific plan and with a view to continuing to promote access to taxis for disabled people and promoting zero emissions vehicles through future policy once it was set after a review.
- 1.8 The review and reassessment of taxi policy took a protracted period of time, and it became clear that although there must be availability of WAVs, that many disabled customers prefer to travel in a saloon – non – WAV for a number of reasons. This led to the council to strive for a mixed hackney carriage fleet, whilst still taking a robust approach to improve the availability of WAVs as hackney carriages and private hire vehicles.
- 1.9 To that end draft proposals were discussed with the taxi and private hire trades earlier this year, following comprehensive and detailed discussions between officers and the then portfolio holder over a protracted period of time.
- 1.10 It is hoped that subject to approval from the new portfolio holder, that the draft proposals for the

review of taxi policy will go into consultation in the near future.

- 1.11 One proposal likely to be put forward will be the principle that current WAV hackney proprietors that only replaced an existing saloon licensed vehicle with a WAV in the lead up to 31st December 2021, on the basis of their assumption that the council would implement its requirement that all hackneys would have to be WAV, would be permitted to licence a saloon as a hackney carriage. It would be hoped that the WAV would remain licensed as a hackney or private hire vehicle, but the vehicle proprietor could effectively revert to their position prior to changing their vehicle to comply with a policy that was changed in September 2021.
- 1.12 This cohort of WAV proprietors would usually have been forced to change their saloon vehicle through the vehicle being written off in an accident, beyond economical repair or through terminal mechanical failure in the lead up to 31st December 2021.
- 1.13 It should be noted that it will be proposed that all new hackney carriage applications must still remain to be for a WAV only, as has been the case for a number of years now. In addition, any hackney carriage plate that has been licensed as a WAV since it was first licensed (usually on the same plate number) will be required to remain as a WAV throughout the period of it being licensed and/ or replaced in the future.
- 1.14 The council has refused similar requests previously for a WAV to revert to a saloon in the past but that was before the council had discussed the proposals detailed above, and where it seems possible at least that council policy will change as explained in the coming months.
- 1.15 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 be permitted to licence a saloon in its place.
- 1.16 The proprietor will update the hearing with his specific and individual circumstances.
- 1.17 The 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 or
 - b) Decide to refuse to provide such delegated authority for an application where the vehicle does not comply with current policy and is not a WAV.
- 1.18 **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.

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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 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.
- 2.3 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. Although only a WAV could be granted for a new application, that element of the adopted policy had not changed.

https://www.cheltenham.gov.uk/news/article/2588/cheltenham_pursues_climate_ambition_and_improved_accessibility_for_taxis

- 2.4 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. However, the council did not change course until September and discussions had only been taking place in the lead up to that time.
- 2.5 The Licensing Team had been approached by a number of saloon vehicle proprietors when the council changed direction and did not decide to implement the requirement for all existing 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. A small number of WAV proprietors asked whether they could go back to having a saloon.
- 2.6 They argued that uncertainty led them to choose not to renew and in some cases they disposed of that (previously) licensed vehicle or that they had been forced to licence a WAV.
- 2.7 In January 2022, the committee allowed a small number of vehicle proprietors to late renew/ replace saloon type vehicles, and not replace them with a WAV, due to the pandemic having had such an impact on the trade, the uncertainty for hackney licence holders during 2021 (prior to the change of direction above) and that such requests were made in a timely fashion after that.
- 2.8 The council allowed such requests in exceptional circumstances. However, throughout the committee made clear that it would not allow hackney carriage proprietor that had made the change to a WAV to go back to a saloon.
- 2.9 In addition, at the current time saloon vehicle proprietors can replace their saloon vehicles in exceptional circumstances (i.e. where the vehicle is written off or requires a high level of financial outlay to remain roadworthy) with a saloon.

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 considered 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 It now seems likely that the council will consult in the near future on a policy change that would allow this vehicle proprietor to licence a saloon instead of their current WAV, and effectively to revert to their previous position.

4. Licensing Comments

- 4.1 This individual is in the difficult position of his current vehicle no longer being fit for use due to terminal mechanical failure of the engine, where the cost of repair would far outweigh the value of the car. If the council goes forward with the proposals in relation to the cohort of WAV hackney carriages that he falls within, he would be able to replace this vehicle with a saloon vehicle once that policy principle might be adopted. That cohort numbers approximately 13 vehicle proprietors.
- 4.2 It is a difficult situation for the council, in that there is a clear intent to consult on certain proposals, one of which affects this vehicle proprietor significantly, but where current council policy would not allow this change from a WAV to a saloon.
- 4.3 However, Members must be mindful of the issues in play and act reasonably, and ultimately in the public interest:-
- The draft council policy principle in respect of this matter will go out to consultation with a view to potential adoption within the coming months.
 - It is proposed that the council policy would be changed to allow such proprietors to revert to a saloon vehicle due to the cohort of WAV proprietors that they fall under.
 - The vehicle proprietor must make a financial investment based on the council’s decision if he wishes to continue working, and so there is an urgency to this question, as he is currently not working as his vehicle is off the road.
 - It is likely that other vehicle proprietors within this cohort may face similar circumstances before the policy might be adopted.
 - The main risk in allowing this application would be to effectively set precedent to an extent, although the individual circumstances will be considered; and this would most likely be problematic only if the council did not go on to adopt this principle.
 - It is worth considering that the taxi and private hire trades were supportive of this proposal when it was discussed with trade representatives, and that the council will likely be proposing further meaningful steps to better promote the availability of WAVs in the borough through any amended policy in due course.
 - However, it should be noted that all draft policy proposals would be subject to proper consultation and full and proper consideration prior to possible implementation. The open and transparent nature of that process should mitigate any concerns regarding the council potentially fettering its judgment in respect of this idea.
 - Alternatively, one could argue if the council refused this request, that it might be fettering its judgement and might go on to remove this specific proposal.

- Therefore the correct approach is to consider this matter fairly with proper consideration of this report and the issues in play and in due course for the council to go through an appropriate and comprehensive process to discuss its taxi policy proposals and for them to be considered with proper and meaningful consideration in due course.
- Unfortunately the proprietor is faced with this situation now, and so the matter must be determined prior to any amended policy being adopted.
- Finally, one must consider that if this request is refused, and then a few months after this decision, the council were to potentially change policy to allow such an application, this might not seem a reasonable and/ or fair approach.

4.4 It is clear that should this application be permitted that other vehicle proprietors are likely to submit similar requests, and so the committee must consider this case fully and carefully.

4.5 Members may wish to set some criteria for officers to consider on a temporary basis, pending the completion of consultation and potential implementation in respect of this draft policy principle, to allow similar circumstances to be dealt with by officers in the meantime.

Report Author

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ANNEX 1

Case Specifics

Name of applicant: Malcolm Rogers

HCV licence number: HCV198

Vehicle registration number: TX51 MAL

Uniform case reference number (internal use only): 24/00334/HACKVA (last granted 23rd March 2024)

New vehicle details: to be confirmed on application