

Cheltenham Borough Council

Licensing Committee – 26 July 2013

Review of a Private Hire Driver's Licence

Mr John James Carr - PHD073

Report of the Senior Licensing Officer

1. Executive Summary and Recommendation

- 1.1 Mr John James Carr holds Private Hire driver's licence PHD073 which is due for renewal on 10th May 2016.
- 1.2 Mr Carr holds a private hire vehicle licence (PHV053), which is a Renault Laguna, registration number NT03 JXB.
- 1.3 Mr Carr was subject to a vehicle inspection on Thursday 4th July 2013 by Police Sergeant (PS) Tony Wallace currently stationed at the Roads Policing Unit at Bamfurlong, Gloucestershire Constabulary.
- 1.4 Police Sergeant (PS) Tony Wallace, contacted the Licensing Office immediately to advise that the vehicle (PHV053) had been inspected at 15.40 hours on Albion Street, Cheltenham. PS Wallace advised that the vehicle had been stopped due to witnessing the driver using his mobile phone whilst driving.
- 1.5 PS Wallace advised that when inspected, three tyres were worn below the legal limit. PS Wallace advised that the vehicle was served with an immediate prohibition notice and Mr Carr has been summonsed to appear in Court for the motoring offences. PS Wallace explained that the defects were the worst tyres he had personally seen on any vehicle for some time. Photographs were taken at the time of the inspection and are attached at **Appendix A**.
- 1.6 In light of this the Public Protection Manager has taken the view that Members of Committee should be aware of the incident because of:
 - 1.6.1 The nature of the offence; and,
 - 1.6.2 The need to ensure that Mr Carr is judged to be a fit and proper person to hold a Private Hire driver's licence.
- 1.7 **The Committee is recommended to resolve that:**
 - 1.7.1 **Mr Carr's private hire driver's licence be continued with no further action because the Committee is satisfied that Mr Carr is a fit and proper person to hold such a licence, or**
 - 1.7.3 **Mr Carr's private hire driver's licence be revoked as the Committee considers Mr Carr is not a fit and proper person to hold a private hire driver's licence because he failed to maintain his vehicle in a roadworthy condition.**

1.8 Implications

1.8.1 Financial

Contact officer: Sarah Didcote
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 264125

1.8.2 Legal

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

The Borough Council has the ability to suspend or revoke a private hire driver's licence with immediate effect if necessary in the interests of safety. There is a right of appeal against a suspension or revocation of a licence which, in the first instance, is to the Magistrates' Court.

Contact officer: Vikki Fennell
E-mail: Vikki.Fennell@teWKesbury.gov.uk
Tel no: 01684 272015

2. Background

2.1 The Borough Council must be satisfied that the holder of a Hackney Carriage licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).

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 Council 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. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.

3.4 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which will be taken into account.

Maintenance of Vehicle

3.5 The vehicle, all of its fittings and any attached equipment shall at all times when the vehicle is in use or available for hire, be kept in a clean, safe, tidy and efficient state, and must also comply with all relevant statutory provisions including in particular those contained in the Road Vehicles (Construction and Use) Regulations 1986.

Tyres

3.6 All tyres fitted to the vehicle or carried as a spare must comply with the Motor Vehicles (Construction and Use) Regulations 1986 and Motor Vehicle (Tests) Regulations 1981.

3.7 The carrying and use of Space saver tyres and tyre sealant kits will only be approved with the support of a method statement. The method statement will detail the drivers and vehicle owners responsibility with regard to the maximum permitted speed and restrictions of use and highlight that they are ONLY a temporary measure to complete the journey in which the puncture occurred. An

approved repair to BS AU159 or a replacement tyre must be undertaken before any further fares are carried.

- 3.8 Run flat tyres fitted to any vehicle by the manufacturer will not be replaced by any other type or make either individually or all of them. The use of these tyres must be supported by a method statement (such as the manufacturers handbook for the vehicle) specifying the capability and restrictions of use following a puncture. In all cases the Tyre Pressure Monitoring System (TPMS) must be working correctly and if required, be reset when a tyre(s) are renewed or replaced. Worn or damaged run flat tyres must be replaced by the same make and size.

4. Licensing Comments

- 4.1 The Licensing Section was informed about the incident by Gloucestershire Constabulary on 5th July 2013 at approximately 8.30am. Mrs Amelia Byres immediately suspended the vehicle and telephoned Mr Carr to advise that the vehicle was suspended. Mr Carr explained that he was currently at the garage having the tyres replaced. Mr Carr produced the vehicle for inspection at the Licensing Office by 2pm the same day.
- 4.2 The vehicle was inspected by Mrs Amelia Byres who confirmed that the vehicle had three new tyres fitted to the vehicle, the suspension notice was lifted at this point.
- 4.3 Mr Carr was interviewed by Mrs Amelia Byres and Mr Philip Cooper; he explained that he was in stationary traffic on Thursday 4th July at approximately 14.00 hours, he explained that his operator A2B had allocated him a job to collect passengers from a local school. He explained that he was in stationary queuing traffic on Albion Street when his mobile telephone rang. He saw from the caller display on the mobile telephone that it was his son calling and felt that as the traffic was stationary he had time to answer the mobile telephone quickly before the traffic started to move again.
- 4.4 He explained that the vehicle was then pulled over by Police Sergeant (PS) Tony Wallace and consequently inspected. On inspection of the vehicle PS Tony Wallace found that the vehicle (PHV053) had three defective tyres. Mr Carr was informed that his vehicle was served with an immediate prohibition notice and that he had been summonsed to Court for the motoring offence, using a mobile phone whilst driving.
- 4.5 Mr Carr explained that he had replaced the tyres on the vehicle at the beginning of June however he had purchased used, part-worn tyres instead of new tyres. He explained that this was the first time he had bought second-hand, part worn tyres and had not appreciated how little wear you get from them. He explained that since replacing the tyres at the beginning of June he had done approximately 5000 miles using them.
- 4.6 Mr Carr went on to say that he knew that the tyres were not perfect, however his vehicle is due to be tested in July for the six monthly MOT and fitness test therefore he decided to keep the tyres on the vehicle and use them until the 6 monthly MOT and fitness test was due to be completed. He explained that this occasion was the first time that he had bought second hand, part worn tyres and that it was an error of judgement on his part.
- 4.4 Mr Carr explained that the vehicle was MOT tested on 5th July 2013, the 'pass' certificate for which he produced during the interview. He explained that the vehicle had passed a private MOT test that morning in which no defects or advisories were listed.
- 4.5 When asked if Mr Carr had been told by his operator or colleagues to change the tyres in recent weeks he advised that no one had mentioned the tyres to him previously.
- 4.6 The operator who had dispatched the driver, Gordon Milne from A2B, gave a statement in relation to the vehicles fitness which is attached at **Appendix B**.

- 4.7 Mr Carr has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.
- 4.8 The Committee must be satisfied that Mr Carr is a fit and proper person before agreeing to the continuation of his licence. The refusal recommendation is based upon the policy guidelines and public safety given the close contact that licensed drivers maintain with members of the public.
- 4.9 The maintenance of all licensed vehicles should be the priority for the vehicle proprietor as the transportation of the public is a position of trust.

Background Papers**Service Records****Report Author****Contact officer:** Mrs Amelia Byres**E-mail:** licensing@cheltenham.gov.uk**Tel no:** 01242 264217