



Agenda

Licensing/Appeals Sub-Committee

Thursday, 18 February 2016 at 10.00 am
Council Chamber - Town Hall

Membership (Quorum – 3)

Cllrs Newberry, Mrs Pound and Wiles

Agenda Item	Item	Wards(s) Affected	Page No
1.	Appointment of Chair		
2.	Administrative Function Members are respectfully reminded that, in determining the matters listed below, they are exercising an administrative function with the civil burden of proof, i.e. 'on the balance of probabilities'. The matter will be determined on the facts before the Sub-Committee and the rules of natural justice will apply.		
3.	Application for the grant of a Hackney Carriage Vehicle Licence to vary a pre-licensing condition Local Government (Miscellaneous Provisions) Act 1976		7 - 14

Head of Paid Service
Town Hall
Brentwood, Essex
10.02.2016

Information for Members

Substitutes

The names of substitutes shall be announced at the start of the meeting by the Chair and the substitution shall cease at the end of the meeting.

Where substitution is permitted, substitutes for quasi judicial/regulatory committees must be drawn from Members who have received training in quasi- judicial/regulatory decision making. If a casual vacancy occurs on a quasi judicial/regulatory committee it will not be filled until the nominated member has been trained.

Rights to Attend and Speak

Any Members may attend any Committee to which these procedure rules apply.

A Member who is not a member of the Committee may speak at the meeting. The Member may speak at the Chair's discretion, it being the expectation that a Member will be allowed to speak on a ward matter.

Members requiring further information, or with specific questions, are asked to raise these with the appropriate officer at least two working days before the meeting.

Point of Order/ Personal explanation/ Point of Information

Point of Order

A member may raise a point of order at any time. The Chair will hear them immediately. A point of order may only relate to an alleged breach of these Procedure Rules or the law. The Member must indicate the rule or law and the way in which they consider it has been broken. The ruling of the Chair on the point of order will be final.

Personal Explanation

A member may make a personal explanation at any time. A personal explanation must relate to some material part of an earlier speech by the member which may appear to have been misunderstood in the present debate, or outside of the meeting. The ruling of the Chair on the admissibility of a personal explanation will be final.

Point of Information or clarification

A point of information or clarification must relate to the matter being debated. If a Member wishes to raise a point of information, he/she must first seek the permission of the Chair. The Member must specify the nature of the information he/she wishes to provide and its importance to the current debate. If the Chair gives his/her permission, the Member will give the additional information succinctly. Points of Information or clarification should be used in exceptional circumstances and should not be used to interrupt other speakers or to make a further speech when he/she has already spoken during the debate. The ruling of the Chair on the admissibility of a point of information or clarification will be final.

Information for Members of the Public

Access to Information and Meetings

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Webcasts

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Guidelines on filming, photography, recording and use of social media at council and committee meetings

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Where members of the public use a laptop, tablet device, smart phone or similar devices to make recordings, these devices must be set to 'silent' mode to avoid interrupting proceedings of the council or committee.

If you wish to record the proceedings of a meeting and have any special requirements or are intending to bring in large equipment then please contact the Communications Team before the meeting.

The use of flash photography or additional lighting may be allowed provided it has been discussed prior to the meeting and agreement reached to ensure that it will not disrupt proceedings.

The Chair of the meeting may terminate or suspend filming, photography, recording and use of social media if any of these activities, in their opinion, are disrupting proceedings at the meeting.

Private Session

Occasionally meetings will need to discuss some of its business in private. This can only happen on a limited range of issues, which are set by law. When a Committee does so, you will be asked to leave the meeting.

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Access

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Evacuation Procedures

Evacuate the building using the nearest available exit and congregate at the assembly point in the North Front Car Park.

18 February 2016

Licensing and Appeals Sub Committee

Application for the grant of a Hackney Carriage Vehicle Licence to vary a pre-licensing condition Local Government (Miscellaneous Provisions) Act 1976

Report of: *Gordon Glenday – Head of Planning and Environmental Health*

Wards Affected: *All*

This report is: *Public*

1. Executive Summary

- 1.1 Members are requested to determine an application for the grant of a Hackney Carriage Vehicle licence. The Vehicle to be licensed does not currently qualify under the Council's pre licensing conditions by virtue of the Engine Cubic Capacity being lower than the stipulated minimum requirement.

2. Recommendation

- 2.1 **The following options are open to Members;**
- a) To grant the application subject to standard conditions**
 - b) To grant the application subject to standard conditions and any additional conditions as determined appropriate in the individual circumstances of the application**
 - c) To refuse the application.**

3. Introduction and Background

- 3.1 The Licensing of Hackney Carriage vehicles is provided under Town Police Clauses Act 1847 and more recently by Local Government (Miscellaneous Provisions) Act 1976 (the Act).
- 3.2 Under provision of Section 47 of the Act a district Council may attach such conditions to the grant of a Hackney Carriage vehicle licence as it considers to be reasonably necessary.
- 3.3 Conditions are in place to be observed by licence holders at all times in the interests of public safety, whilst pre-licensing conditions stipulate the guidelines and minimum standards for newly licensed vehicles.

- 3.4 The applicant, Mrs Michelle Freeman made an application to replace her existing licensed vehicle with a brand new Ford Focus with a petrol driven engine with cubic capacity of 999cc and a registration number FM65 AKN.
- 3.5 Hackney Carriage Vehicle Pre-Licensing Condition 4 states that the minimum permitted cubic capacity of a petrol engine is 1600cc and 1700cc in respect of a diesel engine. A copy of the conditions is attached at **Appendix A**.
- 3.6 There are a number of diesel vehicles (approximately 10) that have already been awarded a Hackney Carriage Licence with an engine capacity of 1560cc. These were permitted to be licensed from as long as 6 years ago on the basis that Ford no longer makes a 1700cc diesel engine and these were demonstrated to be as powerful.
- 3.7 The conditions exist for the safety and comfort of passengers, where the original reason for this particular condition was to ensure that the engine power was sufficient to cater for the vehicle size under full load particularly given the excessive mileage that a Hackney Carriage would cover when compared with a standard family vehicle.
- 3.8 Having been advised that under delegated authority the licensing team would be obliged to refuse the application, Mrs Freeman has requested via e-mail, which was received on 4th February 2016, that consideration be given to waiving the condition on this occasion and allowing the vehicle to be licensed. A copy of the email is attached at **Appendix B**.

4. Issues Options and Analysis of Options

- 4.1 The initial application was received on 1st February 2016 via an online form. The application seeks to replace a currently licensed Ford Mondeo with the vehicle as identified in paragraph 3.1.
- 4.2 Mr Mark Freeman, the husband of Mrs Freeman and acting under authority given by her has submitted the appeal on Mrs Freeman's behalf details of which are laid out in the email and expanded upon in paragraph 5 of this report.
- 4.3 Evidence has been provided to the effect that whilst the cubic capacity of the replacement vehicle is substantially below the minimum standard as set by the pre licensing conditions the power output is greater than that of a standard 1600 cc engine. The justification behind this claim is included in the email attached at appendix B and is supported by Fords own brochures and verified by licensing officers.
- 4.4 The current conditions are in the process of being reviewed. They have served the Council well, however, this matter provides one example as to where they may have become a little outdated due to advances in technology over recent years.
- 4.5 Delegated authority has been given to licensing officers in respect of determination of applications, however, officer discretion cannot be used

to vary a condition, which has been set and agreed by Licensing Committee. A condition may however, if merited be waived or varied in individual cases by a licensing sub committee.

- 4.6 The options in this particular case are to either waive the condition to permit this vehicle to be licensed as a Hackney Carriage vehicle or to refuse to waive the condition, which means that the application will be refused.

5. Reasons for Recommendation

- 5.1 The output of the replacement vehicle is greater than the out of a similar style 1.6 litre vehicle. For example:

The Ford Focus 1.6 Ti-VCT, which the conditions permit to be licensed has a maximum power output of 85PS (63KW) a maximum speed of 106MPH and able to accelerate from 0–62MPH in 14.9 seconds.

The Ford Focus 1.0 EcoBoost, which is not permitted under current conditions to be licensed, has a maximum power output of 100PS (74KW) a maximum speed of 115MPH and 0–62 in 12.5 seconds.

This means that the subject vehicle of this application is 15PS (11KW) more powerful, a top speed of 9MPH more and 0–62MPH 2.4 seconds quicker than the 1.6 Ti-VCT.

- 5.2 Whilst the minimum standards of engine size were included in the conditions to ensure that a vehicle was fit for purpose when fully laden with potentially luggage and four passengers it is probably more fitting that the power output of the engine is considered over and above the cubic capacity.
- 5.3 In consideration of the facts it would appear to be unreasonable that somebody presenting vehicle a) would receive a licence whilst somebody presenting vehicle b) would not.
- 5.4 There is a duty for each application to be considered on its own merits and this means that pre-licensing conditions are able to be diverted from if Members consider it appropriate to do so in the individual circumstances of the application.
- 5.5 Any diversion from policy in this instance would not set a precedent as all cases will be different, particularly given the number of different vehicle manufacturers on the market.

6. References to Corporate Plan

- 6.1 The proposals contained within this report link directly to the following priorities of the corporate plan:

A Prosperous Borough – *“Safeguarding public safety through a risk based regulation and licensing service.”*

Street Scene and Environment – *“Develop effective partnership arrangements so all issues affecting neighbourhoods are delivered in a timely and efficient way”*

7. Legal Implications

- 7.1 Members are asked to consider the individual merits of the application with regard to the pre-licensing conditions and any testimony from the applicant. Due to the hearing’s requirements and the right of the applicant to have the application determined on merit and without bias no recommendations have been made. The available options in respect of this application are highlighted in paragraph 1 of this report.
- 7.2 There is a right of appeal in relation to determination in respect of this application to the Magistrates Court.

Report writer details:

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HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE LICENCE – PRE-LICENSING CONDITIONS

- 1.0 In order that a reliable hackney carriage or private hire service of an acceptable standard is provided within the Borough, a person to be considered for a Hackney Carriage or Private Hire Vehicle Licence on the first or subsequent occasions shall:-
- 1.1 have a vehicle which is in satisfactory mechanical order and body condition and in operational order in every respect, having regard to the requirements of Schedule 2 to these Conditions
 - 1.1.1 In addition, any vehicle first used before 1.4.1987 must be fitted with rear seat belts as if that vehicle was first used on or after that Date.
 - 1.2 have a vehicle which is a saloon, a minibus, a hatchback, an estate motor car (or hackney carriage only a London type cab) Which according to the manufacturers unaltered specifications has:-
 - 1.2.1 seats with a minimum width of not less than 16 inches (40.64cm) per person
 - 1.2.2 separate front seats to accommodate one person in addition to the driver, save in the case of limousines and vintage cars which May have a bench seat separated by an arm (and in respect of purpose-built hackney carriages not fitted with a front passenger Seat.
 - 1.2.3 an internal height of not less than 44 inches (111.76cm)
 - 1.2.4 not less than 11 inches (28cm) clearance between the forward edge of the front seat and the instrument panel or any other Part of the vehicle
 - 1.2.5 not less than 10 inches (25.4cm) clearance between the forward edge of the seats and any other seats
 - 1.2.6 doors which have a minimum rear opening of 37 inches (93.98cm)
 - 1.2.7 accommodation for not less than four passengers
 - 1.2.8 in the case of a standard saloon, hatchback or estate car with two rows of forward facing seats, a minimum of four doors, Each adjacent to and allowing direct access to and from seats and rear seat accommodation for not less than three passengers.
 - 1.2.9 in the case of an estate car with three rows of forward facing seats, a minimum of five doors, four of which are adjacent to and allowing direct access to the front two rows of seats. The rear row of seats may be accessed by moving one or more of the Second row of seats (see Note 1).
 - 1.2.10 in the case of a limousine, a minimum of four doors. Seats may be accessed by moving one or more of the second row of seats.
 - 1.2.11 in the case of minibus, not less than two doors allowing access to the passenger seats, in addition to any provided for the driver.
 - 1.2.12 Hackney Carriage only been so constructed or adapted to afford wheelchair access or the front passenger seat so adapted as to afford easier access to a physically disabled person by means of a suitable purpose-built 90 degree swivel type seat arrangement. (see Note 2).
 - 1.3 satisfactorily complete an application form on which must be shown all cautions and convictions which by virtue of the Rehabilitation of Offenders Act 1974 are deemed not to be spent.
 - 1.4 in the case of first application only, produce two satisfactory written references as to character from persons to whom the applicant shall Have been recently known for a minimum period of two years (See Note 3).
- 2.0 **Veteran and vintage cars and minibuses.**
- 2.1 Nothing in condition 1.2 shall prevent the licensing of veteran and vintage cars. However such cars shall be subject to the same Conditions as all other vehicles, save that referred to in condition 1.2.12.
 - 2.2 Hackney Carriage in the case of a minibus where wheelchair accessibility is provided to the rear passenger compartment, access To that compartment shall be available from both sides of the vehicle.

Private Hire Vehicle in the case of limousines fitted with separate front seats, subject to the Environmental Health and Enforcement Manager being satisfied with submitted evidence that the vehicle is to be used to provide limousine services exclusively, a Certificate of exemption from Condition 1.2.12 may be provided upon application for same.
- 3.0 Reasonable accommodation shall be provided for the hirer's luggage. Vehicles not constructed with separate luggage accommodation Shall be provided with fixed fence or secure parcel shelf, so as to prevent the contents being dislodged into the passenger and driver Compartments (See Schedule 1).
- 4.0 The vehicle shall have a nominal engine capacity of not less than either 1600cc (petrol) or 1700cc (diesel).

- 5.0 the applicant shall submit the vehicle for mechanical and/or such other inspection as the Council may require, in compliance with Schedule 2 to these Conditions, unless an appropriate Inspection Certificate of the Council is valid when the licence is to be granted
- 5.1 save that when a vehicle is new and has no more than 500 miles recorded on the odometer it shall not require such certification until SIX calendar months after the vehicle is first registered subject to the Environmental Health and Enforcement Manager being satisfied That it is a suitable vehicle to be licensed as a hackney carriage or private hire vehicle.
- 6.0 the applicant shall produce the following documents prior to the issue of the licence which must be current at the time the licence Commences:
- 6.1 an insurance certificate or cover note which expressly indicates "on risk" cover for public hire in the case of Hackney carriages and for Private hire vehicles private hire cover:
- 6.2 a Department of Transport Test Certificate where required by the Road Traffic Acts.
- 6.3 proof of proprietorship of the vehicle by means of a Bill of Sale OR hire purchase agreement OR lease agreement.
- 6.4 the Vehicle Registration Document showing the current owner's name and address. In case of a recently acquired vehicle the document Must be produced when returned from the DVLA, having been amended.
- 7.0 Hackney Carriage only the applicant shall be a Licensed Hackney Carriage Driver or Licensed Private hire Vehicle Driver and have been Engaged in such trade within the Borough for at least TWO years.

Note 1

Vehicles will not be licensed to carry more than the maximum number of adult passengers recommended to be carried in the vehicle according to the manufacturer's specification.

Note 2

Hackney Carriage or Private Hire Vehicle Pre-Licensing Conditions 1.2.12 is not yet implemented.

Note 3

References from relations of the applicant will not be accepted as suitable

Note 4

All relevant information will be taken into account when consideration is given to an application for a Hackney Carriage Licence or Private Hire Vehicle Licence, and it may be that the standards and requirements are waived or varied or added to at the discretion of the Council.

Note 5

A licence will not be issued in the name of a company or partnership if any officer of that company or member of that partnership would be refused a licence to drive a hackney carriage or a private hire vehicle by reason of convictions recorded against him.

Schedule 1 – Interpretation

In these conditions

"Council" means "Brentwood Borough Council"

"Borough" means "Brentwood Borough Council Administrative Area"

"Veteran" means "Manufactured prior to 31.12.1916"

"Vintage" means "Manufactured between 1.1.1917 and 31.12.1930"

"Inspection" means "An inspection of the vehicle covering those items set out in Schedule 2 to these conditions"

"Date of first registration" means "as stated on the Vehicle Registration Document"

"Fixed Fence" means "a substantial fence securely fixed in position" a loosely fitted dog guard held in place by rubber suction feet or spring apparatus is not acceptable

Hackney Carriage only "taxi roof sign" means "a sign stating the word TAXI which is a minimum of 20 inches in length and which is capable of being illuminated only when the vehicle is for hire" The words FOR HIRE may also be included upon such sign.

Schedule 2 – Vehicle Inspection

Damage - corrosion - cleanliness.

Ground Level Checks

Doors - Seating - Heating - Lighting - Floors - Carpets - Fare Charges Displayed - Luggage Arrangements - Licence Plate - Rear Bumper - Front Bumper - For Hire Device - Mirrors.

Cab Items

Horn - Panel Lights - Gauges - Interior Light Switch - Driving Seat - Mirror Setting - Fire Extinguisher - Seat Belts - Signage - Smoking Signage.

Other Items

Fold Away Seat - Drivers Safety Screen - Passenger Steps - Ramps - Estate Luggage Gu

Under-Bonnet Item

Wiring Security - Brake Pipes - Brake Flexible Hose - Oil & Fuel Leaks - Exhaust Flange and Manifold Security - Emission of Smoke - Operation of Bonnet - Battery Security.

Steering

Steering Column, Drop Arm, Box Security - Drag Link - Drag Link Ends - Steering Box/Rack, Oil Leaks and Condition - Track Rod, Play in Rod Ends - Steering Lock Stops.

No Fouling - Swivel Pins, Bushes, Thrusts - Stub Axles - Wheel Bearings - Idler Security Condition.

Under Vehicle

Coil Suspension/Spring - Suspension Bushes and Fulcrum Pins - Suspension Main Member, Bottom Pans - Shock Absorbers & Rubbers - Shock Absorbers Links and Arms - Broken/Displaced Leaves - Leaf Retailing Clip - Shackle Pins & Bushes - Hanger Brackets and Chassis Bracket - U Belts - Transmission - Exhaust System - Chassis - Engine Mountings - Body.

Brakes

Flexible Brake Hoses - Brake Fluid Leaks, including Master Cylinder - Footbrake Operation - Brake Meter Test - Pipe Condition - Cable/Rod/Pivots/Fulcrum & Pins - Handbrake, Rods, Cables, Shafts/Pivot/Compensation.

Wheels/Tyres

Hub Bearings - Wheels - Tyres - Spare Wheel.

Schedule 3

The fire extinguisher must be of a suitable type having the appropriate BS EN3 1996 approval with a minimum rating of 5A-34B.

Appendix B

Hi Gary,

Thanks for taking the time to talk to me today, as discussed (Michelle Freeman) the applicant would like to appeal against your decision to consider refusing the application for the vehicle transfer on the following grounds:-

1. The Hackney Carriage Vehicle pre-licencing conditions are dated and don't consider modern engine technology.
2. A Ford Focus with a 1.6 Petrol engine is currently available with a maximum power of 85PS, the Ford Focus 1.0 EcoBoost Petrol engine in the vehicle we're trying to licence has a maximum power of 100ps (over 17% more power).
3. As well as generating more power compared to conventional engines, Ecoboost power units improve fuel efficiency and CO2 emissions by as much as 20 per cent.
4. Ford Motor Company wouldn't supply vehicles with engines that weren't fit for purpose when fully occupied with passengers and luggage.
5. A precedent has already been set with a substantial amount of current licenced Hackney Carriage and Private Hire vehicles not meeting the current pre-licencing conditions of Petrol minimum 1600cc and Diesel minimum 1700cc.

I enclose a Ford Focus ebrochure in pdf format. As the file is just over 8MB I also enclose a link for you to view the file yourself.

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Members Interests

Members of the Council must declare any pecuniary or non-pecuniary interests and the nature of the interest at the beginning of an agenda item and that, on declaring a pecuniary interest, they are required to leave the Chamber.

- **What are pecuniary interests?**

A person's pecuniary interests are their business interests (for example their employment trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and asset including land and property).

- **Do I have any disclosable pecuniary interests?**

You have a disclosable pecuniary interest if you, your spouse or civil partner, or a person you are living with as a spouse or civil partner have a disclosable pecuniary interest set out in the Council's Members' Code of Conduct.

- **What does having a disclosable pecuniary interest stop me doing?**

If you are present at a meeting of your council or authority, of its executive or any committee of the executive, or any committee, sub-committee, joint committee, or joint sub-committee of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not :

- participate in any discussion of the business at the meeting, of if you become aware of your disclosable pecuniary interest during the meeting participate further in any discussion of the business or,
- participate in any vote or further vote taken on the matter at the meeting.

These prohibitions apply to any form of participation, including speaking as a member of the public.

- **Other Pecuniary Interests**

Other Pecuniary Interests are also set out in the Members' Code of Conduct and apply only to you as a Member.

If you have an Other Pecuniary Interest in an item of business on the agenda then you must disclose that interest and withdraw from the room while that business is being considered

- **Non-Pecuniary Interests**

Non –pecuniary interests are set out in the Council's Code of Conduct and apply to you as a Member and also to relevant persons where the decision might reasonably be regarded as affecting their wellbeing.

A 'relevant person' is your spouse or civil partner, or a person you are living with as a spouse or civil partner

If you have a non-pecuniary interest in any business of the Authority and you are present at a meeting of the Authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest whether or not such interest is registered on your Register of Interests or for which you have made a pending notification.

Licensing Sub-Committees

To hear and determine applications that do not sit within the scope of delegation to officers, usually where representations have been received either by a third party against grant of a license, or from the applicant against intended refusal or revocation of a license/registration.

The Planning and Licensing Committee has delegated all functions other than relevant policies and fees setting to officers, with the exception of those other matters as indicated below, which are heard by licensing sub-committee unless otherwise indicated:

Licensing Act 2003 and Gambling Act 2005

- (a) Determination of any application type where a representation has been received in accordance with the legislation.
- (b) Determination of applications for review or expedited review.

Hackney Carriage vehicles and drivers (including enforcement of ranks) and Private Hire vehicles, drivers and operators, with the exception of:

- (a) Suspension or revocation of drivers' licenses (save for initial suspension under provision of Local Government (Miscellaneous Provisions) Act 1976 S61 (2B) if it appears that the interests of public safety require the suspension to have immediate effect).
- (b) Where representation has been submitted by the applicant/license holder against refusal of any application.
- (c) Where representation has been received from an applicant to vary a licensing or pre-licensing condition.

Scrap Metal Dealing

- (a) Determination of applications where representations have been received against refusal in accordance with legislative requirements; and
- (b) Consideration of revocation of a license where representations have been received in accordance with legislative requirements.

Street Collections and House to House Collections

- (a) Appeals against refusal to grant or renew a license

Licensing of sex establishments

- (a) Determination of all applications, revocations and appeals.

Street Trading

- (a) Determination of applications where representation(s) has been received.
- (b) Determination of applications that fall outside of current policy.
- (c) Determination of matters relating to revocation of a license.

Acupuncture, Tattooing, Skin and Ear Piercing and Electrolysis

- (a) Appeals against refusal to grant or renew a registration.
- (b) Revocation of a registration.

Animal Welfare and Security, except for the following:

- (a) Appeals against refusal to grant or renew a license.
- (b) Revocation of a license.

Exercise of Powers under Caravan Sites and Control of Development Act 1960, except for:

- (a) Refusal and revocation of licenses, (other than urgent refusals which are delegated to officers).

Mobile Homes

- (a) Appeals against revocation of a license and/or conditions attached to the grant of a license.