

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:

Gary O’Shea – Principal Licensing Officer

Email: gary.oshea@brentwood.gov.uk

Tel: 01277 312503