

Public Agenda Item: **Yes**

Title: **Consideration of an Application for a New Hackney Carriage Vehicle Licence**

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **4 October 2018**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

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1. What we are trying to achieve

- 1.1 This report asks Members to consider an application for a New Hackney Carriage Vehicle Licence, where the application does not meet the requirements set out in Torbay Council's current Hackney Carriage (Taxi) and Private Hire Licensing Policy 2016 (the Policy).
- 1.2 Members are requested to determine, on the evidence before them, whether or not a departure from the Policy is appropriate.

2. Recommendation(s) for decision

- 2.1 The recommendation of this report, is that the application should be refused as outlined in paragraph A3.1 (i) of this report, on the basis that there is no unmet demand for a new licence to be issued. To grant a new licence would exceed the limit set by Torbay Council following the outcome of the previous unmet demand study.

3. Key points and reasons for recommendations

- 3.1 The primary legislation governing the licensing of Hackney Carriage vehicles is the Town Police Clauses Act 1847 (the 1847 Act) and the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act). The latter of which is concerned also with the licensing of Private Hire vehicles, drivers and operators.

- 3.2 Section 37 of the 1847 Act makes provision for the licensing of Hackney Carriage vehicles and states that the Licensing Authority may licence 'such number of Hackney Carriages of any kind or description adapted to the carriage of persons, as they think fit'. Section 47 of the 1976 Act permits that a District Council may attach conditions to such grant and makes provision for the Council to require a specific design or appearance or for the vehicle to carry specific distinguishing marks in order to identify the vehicle as a Hackney Carriage.
- 3.3 Torbay Council retains a limit on the numbers of Hackney Carriage Vehicles that are permitted to be licensed. This limit stands at 162 full licences and 7 seasonal licences at this time and is currently at full capacity save for one seasonal licence that was not renewed upon expiry at the end of March this year.
- 3.4 This application has been submitted by Mr James William Nicholson and relates to a Black Toyota Auris, registration number MJ64 KHH. The vehicle is currently licensed as a Private Hire vehicle and meets all criteria applicable to being a Hackney Carriage.

For more detailed information on this proposal please refer to the Supporting Information.

**Steve Cox
Environmental Health Manager (Commercial)**

Annex 1 - Supporting information

A1. Introduction and history

- A1.1 The primary legislation governing the licensing of Hackney Carriage vehicles is the Town Police Clauses Act 1847 (the 1847 Act) and the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act). The latter of which is concerned also with the licensing of Private Hire vehicles, drivers and operators.
- A1.2 Section 37 of the 1847 Act makes provision for the licensing of Hackney Carriage vehicles and states that the Licensing Authority may licence 'such number of Hackney Carriages of any kind or description adapted to the carriage of persons, as they think fit'. Section 47 of the 1976 Act permits that a District Council may attach conditions to such grant and makes provision for the Council to require a specific design or appearance or for the vehicle to carry specific distinguishing marks in order to identify the vehicle as a Hackney Carriage.
- A1.3 Torbay Council retains a limit on the numbers of Hackney Carriage Vehicles that are permitted to be licensed. This limit stands at 162 full licences and 7 seasonal licences at this time and is currently at full capacity save for one seasonal licence that was not renewed upon expiry at the end of March this year.
- A1.4 Whilst section 16 of the Transport Act 1985 removed the discretionary power to limit the numbers of Hackney Carriage Vehicles, the ability to do so is retained, provided that the Licensing Authority is able to demonstrate that there is no significant unmet demand for addition Hackney Carriage Vehicle services. This is a process that has been conducted a number of times and on each occasion, no significant unmet demand has been reported.
- A1.5 This application has been submitted by Mr James William Nicholson and relates to a Black Toyota Auris, registration number MJ64 KHH.
- A1.6 The vehicle is currently licensed as a Private Hire vehicle and meets all criteria applicable to being a Hackney Carriage.
- A1.7 Whilst there remains a duty to consider each application on individual merit, granting the application, would amount to a diversion from the Policy, as the limited number set by Torbay Council would be exceeded without evidence to demonstrate that there is an unmet demand in its area, in accordance with section 16 of the Transport Act 1985.
- A1.8 Section 14.1 of the Policy states:
- The Licensing Authority currently imposes a quantity restriction regarding the number of Hackney Carriages licensed by Torbay Council. This has been the case for many years and is supported by results from an unmet demand survey...*
- A1.9 The last complete unmet demand study (although there is one nearing completion), which set the current limit of 162 full licences and 7 seasonal licences was undertaken in late 2014.
- A1.10 No results are currently available with regard to the latest unmet demand study, however, it is anticipated that this will be reported to Members of the full Licensing

Committee, on the 1st November 2018. Therefore it is not possible at this time to confirm whether there is any likelihood of an unmet demand for Hackney Carriage licences in Torbay.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

A2.1.1 Whilst the recommendation of this report is that the application be refused, there is the risk of an appeal to the Crown Court against that decision, where the onus would be upon the Council to illustrate that there is no significant unmet demand at present. This would be supported by the findings of the 2014 study demand.

A2.1.2 The Licensing Authority has a discretion in carrying out its functions, however, must at all times have regard to the Policy. Whilst there is scope to divert from Policy by granting the application, there is a further risk of challenge, which would be by way of Judicial Review by any aggrieved person by that decision.

A3. Options

A3.1 The options are:

- (i) To refuse the application on the basis that there is no current unmet demand for a new licence to be issued.
- (ii) To grant the application
- (iii) To defer a decision pending the outcome of the latest unmet demand study, which is anticipated to be timetabled to be presented to Licensing Committee on the 1st November 2018.

A4. Summary of resource implications

A4.1 There is a right of appeal against refusal of the application, to Crown Court. Such an appeal would carry some resource implications.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 There are no equality, environmental sustainability or crime and disorder issues.

A6. Consultation and Customer Focus

A6.1 There has been no public consultation on this matter, as there is no requirement to do so.

A7. Are there any implications for other Business Units?

A7.1 There are no implications for other business units.

Documents available in members' rooms

None

Appendices:

None

Background Papers:

The following documents/files were used to compile this report:

Torbay Council's Hackney Carriage (Taxi) & Private Hire Policy 2016