

Report No: Public Agenda Item: **Yes**

Title: **Application for Torbay Council Driver's Licence**

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **26<sup>th</sup> October 2023**

Key Decision: **No**

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

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## 1. What we are trying to achieve

This report concerns an application for a Torbay Council Driver's Licence, where the Applicant does not meet Torbay Council's Hackney Carriage & Private Hire Licensing Policy (hereinafter referred to as 'the Policy') requirements. This report is to consider whether the applicant is considered a 'fit and proper person' to hold a Torbay Council Driver's Licence.

## 2. Recommendation(s) for decision

- 2.1 This matter must be determined on its individual merits and any supporting facts or testimony advanced at a hearing. Therefore, there is no recommendation. The options available to Members, however, are highlighted in paragraph **A3.1 of Annex 1** to this report.

## 3. Key points and reasons for recommendations

- 3.1 Under provision of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), Torbay Council is the Licensing Authority in respect of Hackney Carriage and Private Hire Vehicles and drivers within Torbay.
- 3.2 Sections 51 and 59 of the 1976 Act, in conjunction with section 46 of the Town Police Clauses Act 1847, make provision for the licensing of drivers and state that a district council shall not grant a licence to drive a Private Hire or Hackney Carriage vehicle unless they are satisfied that the driver is a 'fit and proper' person to hold a driver's licence.
- 3.3 There is no judicially approved test of fitness and propriety and therefore it is the

responsibility of Licensing Authorities to determine whether a driver, or an Applicant, is indeed fit and proper to hold such a licence. In the absence of such a test, a number of practices have developed over time and have stood up to scrutiny in the Courts and are therefore commonly accepted amongst the majority of Licensing Authorities.

- 3.4 This report follows an application made by Mr Brian Peddie on the 18<sup>th</sup> of September 2023 for a Torbay Council issued dual drivers' licence. In that application he submitted to Torbay Council, he had declared he had been convicted of a traffic offence, dated the 15<sup>th</sup> of May 2023.
- 3.5 In considering the Policy, Mr Peddie's traffic offence falls into the category of a 'major' traffic offence and the Policy states that 'A licence will not normally be granted if the Applicant has been convicted, or previously disqualified from driving in respect of major traffic offences until a period of five years free from conviction or at least five years since the completion of the sentence (whichever is longer)'.
- 3.6 There is a right of Appeal to the Magistrates' Court as provided under section 52 (1) of the 1976 Act against the Licensing Sub-Committee decision. Such an appeal must be lodged within 21 days from the date of a Notice following the decision.

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

**Rachael Hind  
Regulatory Service Manager (Commercial)**

## Annex 1 - Supporting information

### A1. Introduction and history

A1.1 Under provision of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), Torbay Council is the Licensing Authority in respect of Hackney Carriages, Private Hire Vehicles and their drivers within Torbay.

A1.2 Sections 51 (in respect of Private Hire drivers) and 59 (in respect of Hackney Carriage drivers) of the Act state that a district council shall not grant a licence to drive a Private Hire vehicle or Hackney Carriage unless they are satisfied that the driver is a 'fit and proper person to hold a driver's licence'.

A1.3 There is no judicially approved test of fitness and propriety and therefore it is the responsibility of Licensing Authorities to determine whether a driver, or an applicant is indeed fit and proper to hold such a licence. In the absence of such a test, a number of practices have developed over time and have stood up to scrutiny in the Courts and are therefore commonly accepted amongst the majority of Licensing Authorities.

A1.4 Torbay Council has adopted a number of common practices for testing the 'fit and proper' status of drivers and applicants and includes an Enhanced DBS check and DVLA licence checking to name a few.

A1.5 This report follows an application made by Mr Brian Peddie on the 18<sup>th</sup> of September 2023 for a Torbay Council issued dual drivers' licence. In the application he submitted to Torbay Council, he declared he had been convicted of a traffic offence, dated the 15<sup>th</sup> of May 2023.

A1.6 An online DVLA licence check was carried out on Mr Peddie's driving licence on the 18<sup>th</sup> of September 2023 where it was identified he had the following motoring conviction:

Offence date –	15 May 2023
Expiry date –	15 May 2026
Offence –	CU80 Breach of requirements as to control of the vehicle, mobile telephone etc.
Penalty Points –	6 Points

A screen shot taken from the DVLA licence database can be found at Appendix 1.

A1.7 Mr Peddie was contacted by Mr Jonathon Edwards from Torbay Council's Licensing Department by telephone to discuss the application and the relevance of the major traffic offence. It was established during this conversation that Mr Peddie had not read the Policy before submitting the application. Mr Edwards then emailed Mr Peddie with a link to the Policy and asked him if he wished to either withdraw the application or proceed. Mr Peddie responded on the 18<sup>th</sup> of September 2023 by email and requested that the application be heard by Torbay Council's Licensing Committee. This document can be found at Appendix 2.

A1.8 Mr Peddie was written to by Shaun Rackley from Torbay Council's Licensing Department on the 22<sup>nd</sup> of September 2023 to request his submission which would

be put before Licensing Committee, along with a request for his Enhanced Disclosure & Barring Service (DBS) check. This document can be found at Appendix 3.

A1.9 Mr Peddie responded by letter and supplied his mitigating circumstances. This document can be found at Appendix 4.

A1.10 A copy of Mr Peddie's Enhanced DBS can be found at Appendix 5.

A1.11 The Statutory Taxi and Private Hire vehicle standards, as issued by the Department for Transport state:

*5.12 Licensing authorities have a duty to ensure that any person to whom they grant a taxi or private hire vehicle driver's licence is a 'fit and proper' person to be a licensee. It may be helpful when considering whether an applicant or licensee is fit and proper to pose oneself the following question:*

***5.13 Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?***

*If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.*

*5.14 Licensing authorities have to make difficult decisions but (subject to the points made in paragraph 5.4) the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be 'given the benefit of doubt'. If the committee or delegated officer is only "50/50" as to whether the applicant or licensee is 'fit and proper', they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.*

**Relevant excerpts of Torbay Councils Taxi policy state:**

5. Drivers

General Licensing Requirements

5.4 When determining whether a person is "fit and proper", the Licensing Authority will require the applicant to demonstrate that:

vi) They have a satisfactory driving history, as verified through the DVLA and in accordance with the Convictions Policy at Appendix A

vii) They are considered 'fit and proper' by the Licensing Authority, taking account of any other relevant information as may be requested and considered appropriate by the Licensing Authority.

*Appendix A: Taxi & PHV Licensing Criminal Convictions Policy –*

8 Major traffic offences

8.1 A licence will not normally be granted if the Applicant has been convicted or previously disqualified from driving in respect of major traffic offences until a period of five years free from conviction or at least five years since the completion of the sentence (whichever is longer).

8.3 A list of major traffic offences can be seen in table 2.

Table 2: Major traffic offences

<b>Code</b>	<b>Offence</b>
CU80	Breach of requirements as to control of the vehicle, such as using a mobile phone

A1.12 There is a right of Appeal to the Magistrates' Court as provided under section 52 (1) of the 1976 Act against the Licensing Sub-Committee decision. Such an appeal must be lodged within 21 days from the date of a Notice following the decision.

## **A2. Risk assessment of preferred option**

### **A2.1 Outline of significant key risks**

A2.1.1 There are no significant risks.

## **A3. Options**

A3.1 The options are:

- (i) To grant Mr Brian Peddie's application for a Torbay Council issued Driver's Licence, if satisfied that Mr Peddie is considered a 'fit and proper' person to drive a Hackney Carriage or Private Hire vehicle.
- (ii) To refuse Mr Brian Peddie's application on the grounds that he is not considered a 'fit and proper' person to hold such a licence.

## **A4. Summary of resource implications**

A4.1 There may be some resource implications if there is an Appeal to the Magistrates' Court.

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

A5.1 There are no environmental sustainability issues, equalities or crime and disorder issues other than as outlines in this report.

## **A6. Consultation and Customer Focus**

A6.1 There has been no public consultation on this matter and there is no requirement for the Licensing Sub-Committee to consult the public on this matter.

## **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**

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| Appendix 1 | DVLA licence check of Brian Peddie's driving licence carried out on the 18 <sup>th</sup> of September 2023   |
| Appendix 2 | Email correspondence between Jonathon Edwards (Licensing Department) and Brian Peddie about application - dated 18 <sup>th</sup> of September 2023                         |
| Appendix 3 | Letter to Brian Peddie from Shaun Rackley (Licensing Department) requesting Enhanced Disclosure and Barring Service (DBS) check – dated 22 <sup>nd</sup> of September 2023 |
| Appendix 4 | Letter from Brian Peddie with mitigating circumstances to be put before Licensing Committee – dated 28 <sup>th</sup> of September 2023                                     |
| Appendix 5 | Copy of Brian Peddie's Enhanced DBS check (restricted)   |

### **Background Papers:**

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

Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2022  
Department of Transports, Statutory Taxi and Private Hire vehicle standards 2020