

**Committee and Date**

Licensing and Safety Sub-Committee

Wednesday 25 January 2012

1:30 pm

Item**17**

Public

**Local Government (Miscellaneous Provisions) Act 1976
Application for a Hackney Carriage Licence**

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1. Summary

Mr Walayat Hussain has applied to the Council for a Hackney Carriage Licence. Mr Hussain's home address is in the Smallheath area of Birmingham.

In line with Part 8 of Shropshire Council's Constitution (scheme of delegation to officers) officers can refer an application to the Licensing Committee if it is appropriate in the circumstances of any particular case. It is considered that this matter be determined by Members as the application is for a Hackney Carriage Licence from someone living outside of the Shropshire Council area.

The Council's Strategic Licensing Committee, at its meeting on 7th September 2011, accepted a summary of the points of law which will be considered in determining individual 'out of area' applications which are set out in this report.

2. Recommendations

That the application for a Hackney Carriage Licence be refused, on the grounds that the applicant may not intend, to a material extent, to ply for hire in the relevant zone.

3. Risk Assessment and Opportunities Appraisal

3.1 There are no risks associated with this report.

4. Financial Implications

4.1 There are no financial implications associated with this report, although there is a right of appeal on the refusal to grant a hackney carriage licence.

REPORT

5. Requirement to ply for hire within the relevant zone of the council

A licensed Hackney Carriage is specifically exempted from the Private Hire Vehicle licensing requirement and can be pre-booked to pick up and carry passengers for reward either within or outside the area/zone of the Council.

There is a possibility that an applicant does not intend to ply for hire in a Shropshire zone but is only applying to be granted such a licence in order to take advantage (elsewhere) of the statutory exemption from the requirements of Private Hire Vehicle licensing.

Following the Case of R (Newcastle City Council) v Berwick upon Tweed Borough Council (2008) the law was clarified.

The Council has discretion to refuse to license a Hackney Carriage that is not intended to be used to ply for hire within its area/zone. The Council is obliged to have regard to whether an applicant intends to ply for hire within its area or predominantly, or entirely remotely from its area. The judge in the *Newcastle* case stated that it would be difficult for any local authority to justify exercising their discretion by granting a Hackney Carriage licence to an applicant when the authority knows that the applicant has no intention of using that licence to ply for hire in its area. Therefore if an applicant has no intention to ply for hire (to a material extent) in the Council's area/zone a licence should not be granted.

There may be exceptional circumstances where there is a genuine and sufficient reason for needing a Hackney Carriage licence even though there is no intention to ply for hire in Shropshire. If this is so the issue of how remote the area the applicant intends to work in may well be relevant; the Council will need to inspect vehicles and be able to enforce its conditions for the safety of the public. If the intended area was remote from Shropshire then it would be very difficult to justify issuing a licence.

The Council must be reasonably satisfied that the applicant intends to a material extent to ply for hire within the hackney carriage zone.

6. Background

- 6.1 Mr Hussain, being the holder of a Joint Drivers' Licence has made an application for a Hackney Carriage licence. The vehicle is a Black Mercedes Benz E220 saloon car, Registration Number RX53 EHU. The application form was submitted with a copy of the V5 document along with the payment of the fee. The initial application form stated Mr Hussain's home address to be in the Birmingham area, the vehicle registration document gives an address in the Burton-On-Trent area. Council records show that the home address is in the Smallheath area of Birmingham as per the application form. Mr Hussain has applied for a licence for zone 1 (Bridgnorth) and has given further details that he intends to work part time on a Friday and Saturday in the Bridgnorth and Shifnal areas.

6.2 Strategic Licensing Committee, at the meeting on 7th September 2011, approved a Briefing Note in regard to applications for the grant of new Hackney Carriage licences. This Note was agreed to enable the Council to seek to ensure that decisions with regard to these applications were lawful and in line with recent case law. The Note provides:-

- i) Applicants for new licences will be expected to demonstrate a bona fide intention to ply for hire within the zone of Shropshire Council applied for under the terms of the licence for which the application is being made.
- ii) There will be a presumption that applicants who do not intend to a material extent to ply for hire within the Shropshire Council zone will not be granted a hackney carriage licence.
- iii) The presumption in ii) above may be rebutted if an applicant can show that there are exceptional circumstances in the particular case and that the purpose of the legislation and public safety will not be frustrated.
- iv) Even where the applicant intends to ply for hire to a material extent in a Shropshire zone, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

6.3 Members will need to be satisfied that the applicant intends, to a material extent, to ply for hire within the relevant Hackney Carriage zone.

7. Officer Observations

7.1 Subject to the merits of each particular application the Council should only license Hackney Carriages which are intended to ply for hire within the particular zone and should refuse licences to Hackney Carriage proprietors that do not intend to ply for hire, to a material extent, in the particular zone.

7.2 Officers have doubts that the applicant has a genuine intention of plying for hire to a material extent in the Council zone as the applicant currently lives in the Birmingham area.

7.3 The Town Police Clauses Act 1847 gives the Council discretion whether to grant a licence for a Hackney Carriage. However, as the Judge in the *Newcastle* case stated, "it was the intention behind the licensing system that it should operate in such a way that the authority licensing Hackney Carriages is the authority for the area in which those vehicles are generally used".

8. Options for Consideration

8.1 The options available to the Committee, under the Town and Police Clauses Act 1847 and Local Government (Miscellaneous Provisions) Act 1976 when considering such information, are as follows:

- to grant the licence; or
- not to grant the licence

8.2 Should the Committee not grant the licence then the applicant has the right of appeal to the Crown Court.

9. Analysis of Options

9.1 The legislation, guidance and case law emphasise the importance of local control over Hackney Carriages and their drivers. In general the licensing system should operate in such a way that the Authority licensing Hackney Carriages is the Authority for the area or zone in which those vehicles are predominantly used.

9.2 A Hackney Carriage in respect of which a Hackney Carriage Licence is in force is specifically exempted from the Private Hire Vehicle licensing requirement, and may accordingly be pre-booked to pick up and carry passengers for reward either within or outside the area/zone of the Council.

9.3 There is concern that applicants from outside the area may be seeking to use this exemption and not have a genuine intention to principally ply for hire in the zone applied for. Use of vehicles outside the zone/area raises genuine concern as to enforcement, along with issues of public safety.

10. Standard of Decision Making

10.1 This report will be updated at the meeting if necessary to take account of any additional relevant information received after publication.

10.2 Members should not allow themselves to pre-determine or to be prejudiced in favour of or opposed to the application until they have had an opportunity to consider all the pertinent facts.

10.3 Members should be aware that as they are acting in a quasi-judicial role as regards this licensing matter, they should remain in the room so that they hear all the evidence on which the decision will be based.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Hackney Carriage and Private Hire Licensing Policy.

Briefing Note (approved at Strategic Licensing Committee 7th September 2011).

Cabinet Member (Portfolio Holder)

Cllr Steve Charmley

Local Member

Appendices

Appendix – Hackney Carriage Licence Conditions