

HIGH PEAK BOROUGH COUNCIL

Report to Licensing Sub-Committee
24th February 2017

TITLE:	Application for Licensing Policy Variation in respect of a licence for a Hackney Carriage – Mark Webster and Lee Mann
Portfolio:	Councillor Anthony Kemp
Contact:	Alicia Patterson, Operations Manager Regulatory Services

Attached documents

1. Reason for the Report

- 1.1 To inform the Sub-Committee that an application has been received from the proposed Operator of a horse-drawn Landau Carriage with regard to the High Peak Borough Council Hackney Carriage and Private Hire Licensing Policy 2016 to ask for a determination on whether a variation can be granted on the limit on the number of Hackney Carriage licences available within the Borough, and whether specific dispensations and exemptions can be granted in relation to certain sections of the policy.

2. Recommendation

- 2.1 That Members determine the application to vary the Hackney Carriage and Private Hire Licensing Policy in respect of the particular Operator.

3. Executive Summary (See section 4 for Background and Detail)

- 3.1 A representation has been received from Mark Webster and Lee Mann, trading as the Yorkshire Carriage Company of 19 Scholes Avenue, Penistone, South Yorkshire, S36 6DW, to vary particular policy conditions in respect of the operation of the service. The Operator is seeking dispensations and exemptions with regard to sections of the Policy which they believe to be overly burdensome or unnecessary in connection with the specific nature of the business.

- 3.2 The applicant is seeking a variation of the Policy in relation to the limit on the number of Hackney Carriage Licences in the Borough. Section 2.1 of the Policy states that at present, the Authority limits the number of Hackney Carriages to 136, and until such time as this number changes any application for a new Hackney Carriage Licence is unlikely to be granted.
- 3.3 The applicant is also seeking to vary or seek dispensation from the following provisions of the Policy;
- 3.3.1 Appendix B – Vehicle Licence Specifications and Application Procedure
 - 3.3.1.1 Section 8 Advertising and Livery
 - 3.3.1.2 Section 11 Seats
 - 3.3.1.3 Section 12 Seat Belts
 - 3.3.2 Appendix D – Hackney Vehicle Licence Conditions
 - 3.3.2.1 Section 13 Routine Inspection and Testing
 - 3.3.3 Appendix E – Drivers licence Application Procedures and Specification
 - 3.3.3.1 Section 4 BTEC Qualification
 - 3.3.4 Appendix G – The Testing of Applicants for Hackney Carriage and Private Hire Drivers Licence
- 3.4 The applicant has made a number of representations as to why exemptions or dispensations should be given in each of the policy provisions listed above, and these are reproduced in detail in part 6 of this report for consideration.
- 3.5 The issue was discussed with the Senior Officer for Housing, Public Health and Licensing and the Head of Regulatory Services, and it was determined that in accordance with the Council's Policy and given the Council's primary objective of safeguarding the public, any decision to agree a change to, an exclusion from or a variation of the Policy must be made by the Licensing Sub-Committee, as this is not a function delegated to the Licensing Officer.

4. Options and Analysis

- 4.1 In determining the Application, the Sub-Committee may
- 4.1.1. grant or refuse the application to vary the number of Hackney Carriage licences in the Borough of High Peak;
 - 4.1.2 grant or refuse some or all of the requested variations. Where a request is granted, the Sub-Committee may vary some or all of the requests and attach particular conditions or variations of the Policy requirements in each case, and where a request is refused must indicate the reasons for refusal in each case.

5. Implications

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| 5.1 | <u>Community Safety - (Crime and Disorder Act 1998)</u> | Possible Implications on Community Safety. |
| 5.2 | <u>Employees</u> | None. |
| 5.3 | <u>Equalities</u> | This report has been prepared in accordance with the Council's Equal Opportunities policy. |
| 5.4 | <u>Financial</u> | None for the Council, but may have financial implications for the driver or operator |
| 5.5 | <u>Legal</u> | None |
| 5.6 | <u>Sustainability</u> | None. |

Alicia Patterson
Operations Manager - Regulatory Services

Background Papers

Location

Contact

Hackney Carriage and Private Hire
Licensing Policy 2016

Mr M Towers
Senior Officer (Housing,
Public Health & Licensing)

6 Background and Detail

- 6.1 The Applicants wish to operate a 6 passenger horse-drawn Landau carriage to provide scenic tours of Castleton in the High Peak, based on a set route taking in local tourist attractions and contributing to the local economy and assisting local businesses. The applicants are also considering the use of the Landau carriage for seasonal carnival work around the High Peak, but the principal business will be in Castleton.
- 6.2 The Applicant has asked that the application is heard by the Licensing Sub-Committee so that any agreed dispensations or exemptions from the Policy can be applied to the Hackney Carriage Licence and any agreed conditions, limitations or restrictions can be added to the licence conditions in time for the 2017 summer season.

6.3 The applicant cannot currently apply for a Hackney Carriage licence as the allocated number of licences have been issued. The Sub-Committee is invited to consider the business model that has been proposed and determine whether there are suitable and satisfactory grounds for amending the number of available Hackney Carriage licences from 136 to 137. The carriage is not suitable for private hire licensing in these circumstances as it will be based on passenger pick-ups, not on pre-bookings.

6.4 The applicant has also made a number of other representations with regard to the Policy, and the detail in each case is presented under each of the following Policy references for clarity.

6.5 **Appendix B – Vehicle Licence Specifications and Application Procedure**

6.5.1 **Section 8 Advertising and Livery**

6.5.1.1 The Policy states that;

8.3 Livery

From 1st November 2017 all new Hackney Carriage Vehicles, or replacement vehicles on an existing Hackney Carriage Proprietors Licence (where the vehicle is either being replaced as a result of the proprietor's wishes or because it has reached the specified mileage limit), must be silver in overall colour (An exemption from this requirement will be granted where an operator proposes to use an industry-standard taxi clearly identifiable as such, when black as the main body colour which will be acceptable).

6.5.2 **Reason for Exemption**

The Landau Carriage is a custom built vehicle and unique in its structure and colour. It is readily identifiable and there is no mistaking it for a private hire vehicle.

6.6 **Appendix B – Vehicle Licence Specifications and Application Procedure**

6.6.1 **Section 11 Seats**

6.6.1.1 The Policy states that

Passenger seats must be at least 400 mm wide per passenger with no significant intrusion by wheel arches, armrests or other parts of the vehicle. There must be a minimum of 860 mm headroom for all passenger seats measured from the rear of the seat cushion to the roof lining. There must be a minimum of 180 mm legroom for all passenger seats measured from the front edge of the

seat to the rear of any seat, dashboard or internal panel in front.

6.6.2 Section 12 Seat Belts

6.5.2.1 The Policy states that

All vehicles must be fitted with fully operational seat belts, one for each passenger to be carried.

6.6.3 Reason for Dispensation

The Landau is custom built and as such has fixed seating which does not comply with the above condition. Due to the nature of the construction seat belts are not fitted for members of the public. The vehicle only travels slowly as it is not mechanically driven.

6.7 Appendix D – Hackney Vehicle Licence Conditions

6.7.1 Section 13 Routine Inspection and Testing

6.7.1.1. The Policy states that the vehicle proprietor must

a) Present a valid MOT certificate to the Authority for the vehicle every six months, and

b) Must ensure that all advisory items identified on the MOT are completed before application and documentation confirming the works have been carried out is submitted to the Authority.

6.7.2 Reason for Dispensation

The Landau is exempt from MOT because it is a non-mechanical vehicle. The Operator is proposing that their nominated garage can produce a report before the season to ensure that the vehicle is mechanically safe. Veterinary Reports will also be provided for the horse or horses who will pull the carriage.

6.7.3 It should be noted, however, that the vehicle may be made available for other local events which may fall outside the seasonal period. In this case, a single report at the beginning of the 'season' may not cover the safety of the vehicle if used at other times of the year for private functions at different locations. Members are invited to give this due consideration when determining this particular dispensation request and in particular may wish to make some recommendation on the frequency of inspections. It may also be advisable to ensure that the carriage is fitted with lights which can be activated by the driver from the driving position.

6.8 Appendix E – Drivers licence Application Procedures and Specification

6.8.1 Section 4 BTEC Qualification

6.8.1.1 The Policy states that All Drivers whose applications were made after 1st November 2016 must complete and successfully achieve a pass in either the BTEC Level 2 certificate in the introduction to the role of the Professional Taxi or Private Hire Driver or the NVQ level 2 certificate in Road Passenger Vehicle Driving (Taxi and Private Hire Driver) or obtain an equivalent qualification within 1 year of the initial grant of licence, and must be enrolled on a course within 3 months of the licence being issued. Licences will only be issued for one year to applicants who have yet to complete the training and then on successful completion of the above requirement and upon presenting evidence of so doing to the Authority will be extended to the full term upon renewal. From 1st November 2019 this will be a pre-application and renewal requirement, and an application or renewal from any applicant who has not met this requirement will not be accepted.

6.8.2 Reason for Dispensation

The Operator has expressed concerns that it may be difficult to recruit and retain drivers if the BTEC requirement is imposed.

6.9 Appendix G – The Testing of Applicants for Hackney Carriage and Private Hire Drivers Licence

6.9.1 The Policy states that In order to maintain the standards that the Authority expects of its drivers, applicants for a hackney carriage or a private hire driver's licence will be required to pass various tests (known as the Knowledge Test) as part of the process of satisfying the Authority that they are suitable persons to hold such a licence. The Knowledge Test is a pre-application requirement and is in addition to the Driver Licence application conditions. The nature of the tests making up the examination are listed in Appendix G.

6.9.2 The Reason for Dispensation

The operator states that the Landau operates on a set route around the Castleton area. The Operator requests dispensation from the Knowledge Test on the grounds that the driver is not required to know a variety of destinations and drives the same, predetermined route on each occasion during the season.

6.9.3 There are some considerations in respect of this request.

6.9.3.1 It should be borne in mind that although the vehicle operates on a set route, the route almost entirely consists of driving on the public highway. The driver

must therefore be expected to display some knowledge of local geography and the Highway Code.

- 6.9.3.2 The driver does not select the passengers, and so there is no prior knowledge of the passenger's vulnerabilities or needs. Some knowledge of safeguarding would therefore be appropriate.
- 6.9.3.3 The Council's Combined Hackney Carriage and Private Hire Licence ordinarily allows the holder to drive any Hackney or Private Hire Vehicle, and so once issued there is nothing to prevent the Tram Driver from taking up other taxi work as a supplement. In the event that dispensation from the Knowledge Test is granted, members may wish to consider conditioning the Drivers licence so that it is limited to driving only this specified vehicle.
- 6.9.3.4 Members may also wish to consider whether the driver should be subject to any alternative test, such as the British Driving Society's Road Driving Test, if dispensation is granted from the local Knowledge Test.

- 6.10 In general terms, members may wish to consider the following conditions when determining the application;
 - 6.10.1 Whether to restrict the Hackney Plate specifically to this vehicle, making the plate non-transferable.
 - 6.10.2 Whether to restrict the dispensations only to the seasonal activity, and not to the Carnival/Event usage.
 - 6.10.3 Whether to impose a condition that a valid certificate of fitness is issued by a specialist veterinary surgeon, for each horse that is to be used. Each certificate remains valid for one year. Consideration may also be given to any restrictions that might be placed on the use of the horse – for example
 - No horse shall be in harness for more than the number of hours assessed by the Vet and the Council based on the approved route. If in harness for 7 consecutive hours then shall have a break during that period of no less than 1 hour and shall be fed and watered.
 - No horse harnessed and in use in connection with a hackney carriage on any one day shall be used at any time during that day for any other purpose.
 - Carriages to be fitted with a dung-catching device while the carriage is in use on a public highway
 - the Horse shall be microchipped

6.10.4 Whether to require the driver to present a Road Driving Certificate as described in the Department of Transport's Code of Practice for Horse-Drawn Vehicles, in addition to a Full Driving Licence.

- 6.11 The primary purpose of licensing Hackney Vehicles and Drivers is to secure the safety of the public. The High Peak Borough Council is dedicated to providing a safer High Peak. The Council's aim in licensing drivers for Private Hire/Hackney Carriage work is to provide a positive approach towards the safety of people travelling in Private Hire/Hackney Carriage Vehicles within the Borough of High Peak. The over-riding consideration of the members of the Committee is to protect the travelling public; the Authority is mindful of the needs of the applicant but this will be balanced against the over-riding duty that the Authority has to protect the safety and welfare of the public and most especially those who are vulnerable and who may rely for their safety and well-being in the process adopted in the issue of licences.
- 6.12 The Sub-Committee, in their consideration of the above point, may refer to section 1.6 of the Hackney Carriage and Private Hire Licensing Policy 2016, which states that where application of the policy may result in unfairness to an existing licensee then representations may be made at the time before renewal to explain why such unfairness will result and these must be considered by the Authority before determining the application. Each case will be considered on its merits in the light of the policy and any representations received. If it is determined that application of the policy would result in unfairness then the policy may be modified as appropriate in the individual circumstances of the case. Any decision to modify the Policy must be considered by the Licensing Sub-Committee.