

**South Lakeland District Council  
Licensing Regulatory Sub-Committee  
Wednesday 6 October 2021**

- 1. Application to licence a Private Hire Vehicle contrary to Vehicle Age Limit Policy**
- 2. Exemption from the requirements to display private hire plates and signage because of the nature of the vehicle and the business.**

**Michael Ian Heaps (Vintage Lakeland Tours)**

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<b>Portfolio:</b>	Cllr Robin Ashcroft
<b>Report from:</b>	Simon Rowley – Director of customer & commercial services
<b>Report Author</b>	Julie Richings – Specialist - Licensing
<b>Wards:</b>	(All Wards);
<b>Forward Plan:</b>	Not applicable

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**1.0 Expected Outcome**

- 1.1 Members are requested to consider an application from a proposed private hire operator, Vintage Lakeland Tours to licence a private hire vehicle for the first time. The application was previously considered at the Licensing Regulatory Sub-Committee on 21 June 2021 and was due to be considered on Monday 20 September 2021 but the hearing was not quorate, and so it was adjourned (Agenda, reports and minutes can be found [here](#)).

**2.0 Recommendation**

- 2.1
- 1) Members are requested to determine the application and if approved, allow the applicant's vehicle to be licensed as a private hire vehicle, and be exempt from the requirement to display private hire plates and signage.**
  - 2) Subject to this application being approved the applicant shall abide by all other approved conditions of application for a private hire vehicle licence.**
  - 3) Members may attach to the grant of a licence such conditions as they may consider reasonably necessary**

**3.0 Background and Proposals**

- 3.1 On 25 January 2021 Mr Michael Ian Heaps, Vintage Lakeland Tours, submitted an application to licence a 1928 Austin 12/4 Windsor saloon car as a private hire vehicle. The full application can be viewed at **Appendix 1** of this report.

- 3.3 The vehicle:-

- a) bears the registration mark YW 7340;
- b) was first registered on 11 July 1928;
- c) has been owned by Mr Heaps since 10 November 2020;

d) has travelled at least 3,200 miles on 29 August 2021; and  
e) passed the MOT with no advisory notices recorded.

3.4 This application was considered on 21 June 2021, and that Licensing Regulatory Sub-Committee also viewed the vehicle prior to making their decision. After due deliberation, the application was refused on the grounds that;

the Sub Committee were not satisfied that the issuing of the licence would be safe under Section 48 (a) (iv) of the Local Government (Miscellaneous Provisions) Act 1976.

- Firstly due to the absence of seat belts in the vehicle for passengers, this was considered to be a safety risk to passengers and further the applicant had not adequately considered child passengers and arrangements for their safety.
- Secondly the absence of a break test report
- Thirdly the absence of hazard warning lights
- The Sub-Committee noted the absence of an up to date V5

A copy of the decision letter is attached at **Appendix 2**

3.5 Mr Heaps appealed the Committee's decision to Barrow Magistrates Court citing two procedural points and a third point in his belief that his vehicle predated legislation which controlled the fitting and wearing of seat belts and hazard lights and was exempt from the requirements of subsequent legislation. A directions hearing was arranged for 9 August 2021. A copy of the appeal notice is attached as **Appendix 3**.

On the 9 August 2021 the Magistrates listed the appeal for hearing in October 2021.

3.6 Mr Heaps has worked with Licensing Officer to consider alterations or modifications to his vehicle to address the previous Panel's concerns with regard to the safety of the vehicle, and as a consequence, Mr Heaps withdrew his appeal on 7 August 2021.

3.7 With regards to the fitting of seat belts to the vehicle, Members are advised that the basic construction of vehicles at the time this vehicle was built, is one of the oldest chassis, the ladder chassis gets its name from the shape of has which simply put, is like a ladder. It has two long and heavy beams which are supported by two short beams.

3.9 In 1967 legislation was passed which made it a legal requirement for all cars to be manufactured with seat belts, this was then retrospectively applied to all vehicles manufactured from 1 January 1965.

3.10 Car manufacturers have had to install seatbelts since 1965 but the law requiring drivers to wear them did not come in to force for another 18 years. In 1991 the law changed making it a legal requirement for adults to wear seatbelts in the back of cars.

3.11 Any vehicle manufactured prior to this date without seat belts were not required under the law to have them fitted, for the reason that prior to 1965 there were still a lot of traditionally built cars on the roads which by their design were incapable of accepting seat belts.

3.12 Mr Heaps web site makes it clear to potential passengers that the 1928 Austin 12/4 Windsor saloon, was built for comfort and not for speed, he advises that the vehicle's top speed would be around 35 mph, it could possibly reach speeds of 45 mph but the

engine becomes very noisy and would interfere with passengers enjoyment of the countryside.

3.13 Under the Terms and Conditions on the website, Mr Heaps advises that;

*“Due to its age the vehicle is not fitted with seat belts, passengers under the age of 16 must travel in the rear with a responsible adult.”*

3.14 In addition Mr Heaps is proposing that the Sub-Committee add additional conditions to his vehicle licence if Members were minded to grant the licence. Those conditions are

The vehicle must not be used for standard private hire journeys  
The vehicle must be used for the provision of pre-booked tours with set tour fees  
Children under the age of three may not be carried in the vehicle  
Children over the age of three must be carried in the rear of the vehicle

3.14.1 In respect of the second point of the previous licensing sub-committee which concerned the lack of a braking test, vehicle has been subjected to an MOT test which includes the testing of the vehicles braking system and Mr Heap’s vehicle passed the MOT with no advisories and the tester declared the vehicle to be in exceptional condition for its age. As the vehicle does have an MOT certificate it can be legally used on public roads. A copy of the current MOT Certificate is attached at **Appendix 4**

3.15 The current MOT standards in respect of the testing of braking systems means that the vehicle examiner must check;

*Brake condition and operation, service brakes, secondary brakes, parking brakes, anti-lock braking system (ABS), electronic braking system (EBS) and brake fluid.*

3.16 The DVSA guidance for MOT testers exclude vehicles from requiring modern braking systems if that vehicle is of an age that pre-dates the legislation which made it mandatory to have such a braking system.

3.17 With regards to the previous Panel’s concerns that the vehicle does not have hazard warning lights, by law the vehicle is not required to have hazard warning lights as it was built prior to legislation introducing the requirement for vehicles to be fitted with hazard warning lights.

3.18 As the vehicle was first used before January 1936 the requirement for Mr Heaps to have hazard warning devices fitted does not apply, indeed the MOT guidance issued by the DVSA states

*Direction indicators and hazard warning lamps are not required on vehicles:*

- *first used before 1 January 1936*
- *that do not have front and rear position lamps, or have such lamps permanently disconnected, painted over or masked that are only used during daylight hours and not used at times of seriously reduced visibility*

3.18.1 In order to address the previous Panel’s concerns regarding the lack of hazard warning lights, Mr Heaps has agreed to carry two warning triangles in his vehicle at all times

and in an emergency or break down would place a triangle in front of the vehicle and one to the rear of the vehicle, alerting other motorists that there is a hazard ahead.

3.19 The Local Government (Miscellaneous Provisions) Act 1976 which is the primary piece of legislation in respect of the licensing of private hire vehicles does not make any reference to the requirements for seat belts, nor hazard warning lights. However, the Local Government (Miscellaneous Provisions) Act 1976 section 48 states that a district council shall not grant such a licence unless they are satisfied -

- a) That the vehicle is
  - i) Suitable in type, size and design for the use as a private hire vehicle;
  - ii) Not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage;
  - iii) In a suitable mechanical condition;
  - iv) Safe; and
  - v) comfortable

3.20 This application, if granted, would require the Council to dispense with the current vehicle age limit policy, in this instance if deemed appropriate, as the vehicle in question is more than five years old and is not a wheelchair accessible vehicle.

3.21 Exemption from the requirements to display private hire plates and signage is also being requested because of the nature of the vehicle and the proposed business.

3.25 Mr Heaps website has a list of set tours ranging in size and price dependent upon the tour chosen

3.26 The Policy of the Council on the age of hackney carriages and private hire vehicles states at article 3.5:

*3.5 Maximum age of vehicle*

*All hackney carriages and private hire vehicles, excluding wheelchair accessible purpose built hackney carriages must be less than five years old when first registered as hackney carriages or private hire vehicles.*

3.27 To comply with this part of the policy, the vehicle that is subject to this report should not be first licensed after 10 July 1933.

3.28 The age restriction policy was adopted to ensure that hackney carriages and private hire vehicles met modern safety requirements and provided the travelling public with reasonably up-to-date vehicles. One of the unintended consequences of the policy was that it also ensured the vehicle fleet complied with the most recent vehicle emissions requirements. This is particularly important, as it manages, as far as practicable, the emission of noxious fumes and diesel particulates in the District. The current EU emissions standards for passenger cars were updated in September 2014 (Euro 6), September 2011 (Euro 5b) and September 2009 (Euro 5a). The standard set in Euro 5b contains maximum particulate emissions for the first time.

Although the limits were set on the dates outlined above, a transition period was allowed in most cases to permit manufacturers to clear their old stock. For example Euro 5b only came into force for nearly all new vehicles in January 2011. Due to the age of this vehicle and being classed as a 'historic vehicle' within the V5 log book, the exhaust emissions for the vehicle being considered today are not shown within the log book.

- 3.29 The Hackney carriage and Private Hire Licensing Policy 2017 Version 7 effective from November 2018 at 10.1 states

*Private hire licence plates are a statutory requirement and it is South Lakeland District Council's policy to require signage on private hire vehicles in line with the conditions approved by the Licensing Regulatory Sub-Committee. These measures identify a vehicle as a properly licensed private hire vehicle and avoid confusion with hackney carriages.*

*However, private hire businesses providing what they refer to as executive hire may wish to apply for exemption from the requirements to display private hire plates and signage because of the nature of their vehicle(s) AND their business. A Licensing Regulatory Sub Committee will determine any such application where this policy cannot be implemented through delegation arrangements.*

- 3.30 Paragraphs 10.3 to 10.4 inclusive of the policy set out guidance to assist the Sub-Committee in determining an application concerning the executive hire exemption.
- 3.31 Members could chose to depart from their Policy if a vehicle was clearly not intended for the standards use associated with the majority of private hire vehicles licensed in the district.

#### 4.0 **Consultation**

- 4.1 On 29 December 2020 the vehicle passed its Private Hire vehicle inspection at T.C Motors, A further vehicle inspection was carried out by T.C. Motors on 22 January 2021 and the report shows the condition of the vehicle to be 'In exceptional condition' A copy of the two engineers reports can be viewed in **Appendix 5** of this report.
- 4.2 Pictures of the external and internal of the vehicle can be viewed at **Appendix 6** of this report.
- 4.3 A comprehensive business plan has been submitted by Mr Heap with his application, and can be viewed at **Appendix 7**.

#### 5.0 **Alternative Options**

- 5.1 The Local Government (Miscellaneous Provisions) Act 1976 (the Act) states that

A district council shall not grant such a licence unless they are satisfied -

- (a) that the vehicle is
  - (i) suitable in type, size and design for use as a private hire vehicle;
  - (ii) not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage;
  - (iii) in a suitable mechanical condition;
  - (iv) safe; and
  - (v) comfortable;

And may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary including, without prejudice to the generality of the foregoing provisions of this subsection, conditions requiring or prohibiting the display of signs on or from the vehicle to which the licence relates.

- 5.2 If the Council does not grant the application, or places additional conditions on the

licence, the applicant may appeal against the decision of the Council, if he is aggrieved by the refusal to grant a vehicle licence under this section, or by any conditions specified in such a licence. The appeal must be made to the magistrates' court not later than 21 days after the aggrieved was served with written notification of the decision of the Council.

## **6.0 Links to Council Priorities**

- 6.1 The current Hackney Carriage and Private Hire Licensing Policy for South Lakeland District Council is underpinned by the following objectives –
- (i) The protection of public health and safety;
  - (ii) A professional and respected hackney carriage and private hire trade;
  - (iii) Access to an efficient and effective public transport service;
  - (iv) The protection of the environment

These objectives tie to the current Council priorities 'responding to climate change and enhancing biodiversity', 'reducing income and health inequalities' and 'working across boundaries to deliver economic growth'.

## **7.0 Implications**

### **Financial, Resources and Procurement**

There are no financial or resource implications.

### **Human Resources**

There are no issues in respect of Human Resources

## **7.3 Legal**

The Local Government (Miscellaneous Provisions) Act 1976 (the Act) regulates the grant and renewal of private hire vehicle licences. Section 48 of the Act regulates the issue of licences and is replicated in part at item 5.1 above.

Section 77 of the Act together with sections 300 to 302 of the Public Health Act 1936 regulate the means of appealing against a decision by the Council. This is explained in item 5.2 above.

R v Hyndburn Borough Council in the High Court in 1992, ruled that it is possible in law to have a policy of strict age limits provided that it is not an immutable policy. The opportunity to depart from a policy must still be afforded if circumstances warrant it and each application must still be treated on its merits. In the event of an application for a private hire vehicle or hackney carriage being refused on the basis of the age limit policy, the applicant would have a right of appeal to the Magistrates' Court.

- 7.3.3 Article 6 of the Human Rights Act 1988 provides that everyone is entitled to a fair hearing. Accordingly an applicant should be afforded the right of a hearing before any decision is taken on his application. The applicant has been invited to attend to make representations to the Licensing Regulatory Sub-Committee.

## **Health, Social, Economic and Environmental**

- 7.4 Have you completed an Health, Social, Economic and Environmental Impact Assessment? **No**

- 7.5 If you have not completed an Impact Assessment, please explain your reasons: This process and the current Hackney Carriage and Private Hire Licensing Policy 2018 have been subjected to an equality impact analysis and no issues were found.

### Equality and Diversity

- 7.6 Have you completed an Equality Impact Analysis? **No**
- 7.7 If you have not completed an Impact Assessment, please explain your reasons: This process and the current Hackney Carriage and Private Hire Licensing Policy 2018 have been subjected to an equality impact analysis and no issues were found.

### Risk

Risk Management	Consequence	Controls required
Should members grant the application, the operator may use a sub-standard private hire vehicle.	Members of the public may be put at risk of injury or death if a sub-standard private hire vehicle is licensed.	Members need to be satisfied that the vehicle to be licensed is maintained in a safe and roadworthy condition, and will continue to be maintained in that manner
Should members refuse the application, or grant it with conditions, the applicant has a right of appeal to the Magistrates' Court	If the appeal is allowed, costs may be granted against the Council.	Members to be made aware of the right to appeal.

### Contact Officers

Julie Richings, Licensing Specialist 01539 793140 [julie.richings@southlakeland.gov.uk](mailto:julie.richings@southlakeland.gov.uk)

### Appendices Attached to this Report

(delete if no appendices attached)

Appendix No.	Name of Appendix
1	Copy of Private Hire Vehicle Application
2	Copy of Decision Notice
3	Copy of Appeal to Magistrates
4	MOT Certificate
5	Copy of vehicle inspection x2
6	Photographs of Austin Heavy YW7340
7	Proposed business plan

### Background Documents Available

Name of Background document	Where it is available
Local Government (Miscellaneous Provisions) Act 1976	<a href="http://www.legislation.gov.uk/ukpga/1976/57/contents">http://www.legislation.gov.uk/ukpga/1976/57/contents</a>
MOT manuals and special notices: detailed information	<a href="http://www.gov.uk">MOT and vehicle tests: MOT manuals and special notices - detailed information - GOV.UK (www.gov.uk)</a>

### Tracking Information

Signed off by	Date sent	Date Signed off
Legal Services	02/09/21	09/09/21

Section 151 Officer		
Monitoring Officer	02/09/21	09/009/21
CMT	N/A	N/A

<b>Circulated to</b>	<b>Date sent</b>
Lead Specialist	2 September 2021
Human Resources Lead Specialist	N/A
Communications Team	N/A
Leader	N/A
Committee Chairman	N/A
Portfolio Holder	N/A
Ward Councillor(s)	N/A
Committee	N/A
Executive (Cabinet)	N/A
Council	N/A