

**South Lakeland District Council**  
**Licensing Regulatory Sub-Committee**  
**Thursday 11 August 2022**  
**Application to Renew Hackney Carriage Licence**  
**contrary to Vehicle Age Limit Policy**

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**Portfolio:** Economy, Culture and Leisure Portfolio Holder  
**Report from:** Director of Customer and Commercial Services  
**Report Author:** Donna McCarthy – Specialist (Licensing)  
**Wards:** Not Applicable  
**Forward Plan:** Not applicable

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**1.0 Expected Outcome and Measures of Success**

1.1 An application has been received from a hackney carriage proprietor to renew the hackney carriage licence that is issued to his Audi A6 S Line TDI motor car. This, 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 ten years old and is not a wheelchair accessible vehicle. The application for renewal is attached at Appendix 1.

**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 hackney carriage. The Council may attach to the grant of a licence such conditions as it may consider reasonably necessary.**

**2) Subject to this application being approved, the applicant shall abide by all other approved conditions of application for a hackney carriage vehicle licence.**

**3.0 Background and Proposals**

3.1 Hackney carriage HCV382, is an Audi A6 S Line TDI motor car;

- a) Its registration number is MF61 ERY;
- b) It was first registered on 5 September 2011;
- c) It has covered 277,605 miles since its date of first registration;
- d) It has been licensed as a hackney carriage since January 2016 and transferred to Mr Ullah in July 2021, the vehicle was 9 years 10 months old at the date of transfer;

- e) It is not a wheelchair accessible vehicle;
- f) During its life as a hackney carriage, it has been MOT tested on 18 occasions;
- g) Of those tests, it has failed on four occasions and 3 of those occasions have been since 29 July 2021. The MOT certificates are attached at Appendix 2;
  - 29/07/2021 - 231,077 miles – Nearside front brake pads less than 1.5mm thick (1.1.13 (a) (ii))
  - 04/04/2022 – 263,990 miles - Emissions not tested (8.2.2.2 (e))
  - *11/07/2022 – 277,284 miles –*
  - *Do not drive until repaired (dangerous defects):*
    - Offside Rear Tyre tread depth below requirements of 1.6mm (5.2.3 (e))
  - *Repair immediately (major defects):*
    - Nearside Front Coil spring fractured or broken (5.3.1 (b) (i))
    - Nearside Front Tyre has a cut in excess of the requirements deep enough to reach the ply or cords (5.2.3 (d) (i))
    - Offside Rear Road wheel fixing missing (5.2.1 (a) (i))
- h) The vehicle was retested on 12 July 2022. It passed the MOT without any advisories, however, there is a 321 miles difference between 11 July and 12 July. A copy of the test certificate can be seen in Appendix 3 of this report.
- i) The vehicle was also subjected to a hackney carriage inspection on 11 July 2022. The inspection showed the vehicle complied with the requirements of the Council. A copy of the report can be seen in Appendix 3 of this report.
- j) The vehicle meets a Euro 5 emission standard.
- k) The applicant has submitted a request for permission to relicense his vehicle before the current licence expires on 28 July 2022.
- l) The vehicle will not be eligible for re-licensing on that date, as it is already over 10 years.
- m) The age restriction policy was adopted on 29 January 2009 and is included in the current Hackney Carriage and Private Hire Licensing policy document at section 3.5:

3.5 Maximum age of vehicle:

  - 1) Not relevant
  - 2) *No Hackney Carriage or Private Hire vehicle, other than wheelchair accessible vehicles, will be re-licensed after reaching 10 years old;*
- n) 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.

- o) The Hackney Carriage and Private Hire Licensing policy has been reviewed, consulted and updated during 2022. The policy was approved by the Licensing Regulatory Committee on 4 July 2022, the policy will be implemented following a presentation to the Overview and Scrutiny Committee on 26 August 2022. Section 3.2 of the revised Taxi Licensing Policy states: *All new vehicles engines must be a minimum of Euro 6 standard. This is being implemented to ensure that new vehicles on the SLDC fleet are not emitting dangerous levels of emissions and pollution.*

#### **4.0 Consultation**

- 4.1 On 28 January the applicant advised that the vehicle had been involved in a minor accident and would be repaired. A description and photos of the damaged vehicle were not provided. An engineer's report has been received, this was undertaken by MGD Limited, Mintsfeet Road South, Mintsfeet Industrial Estate, Kendal on 22 April 2022. The vehicle was inspected by an engineer/mechanic employed by MGD Limited of Kendal. The engineer assessed the vehicle to be in 'exceptional' condition for its age. A copy of the engineer's report can be viewed in Appendix 1 of this report.
- 4.2 On 31 May 2022, the applicant submitted an email to the licensing office in support of his application. The e-mail contained a written explanation outlining his reasons for requesting the sub-committee to disregard the policy in this case. The written request can be viewed in Appendix 4 of this report.
- 4.3 In light of the Failed MOT test on 11 July and the subsequent MOT pass certificate issued on 12 July 2022 the licensing officer emailed the applicant requesting an explanation for the 321 miles between the tests and why did the vehicle fail the MOT on matters such as tyres being below the legal limit. The correspondence between the licensing officer and the applicant is attached at Appendix 5.
- 4.4 The licensing specialist arranged to view the vehicle on Monday 18 July 2022. During the inspection the Licensing Specialist asked the proprietor about the nature of the damage that occurred in January 2022. The proprietor explained that the Nearside (passenger side) front headlight needed replacing and there was minor damage to the front bumper. The licensing officer took photos of the vehicle including the replacement headlight. The photos are available at Appendix 6

#### **5.0 Alternative Options**

- 5.1 The 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 hackney carriage vehicle;
- (ii) in a suitable mechanical condition;
- (iii) safe; and
- (iv) 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 purpose of the Hackney Carriage and Private Hire Licensing system is to protect the safety and welfare of the travelling public and therefore links to the council priority of Health and Wellbeing.

## **7.0 Implications**

### **7.1 Financial and Resources**

- 7.1.1 None.

### **7.2 Human Resources**

- 7.2.1 None.

### **7.3 Legal**

- 7.3.1 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 to 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.

- 7.3.2 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 Section 47 of the Local Government (Miscellaneous Provisions) Act 1976 states:

*(1) A district council may attach to the grant of a licence of a hackney carriage under the Act of 1847 such conditions as the district council may consider reasonably necessary.*

*(2) Without prejudice to the generality of the foregoing subsection, a district council may require any hackney carriage licensed by them under the Act of 1847 to be of such design or appearance or bear such distinguishing marks as shall clearly identify it as a hackney carriage.*

*(3) Any person aggrieved by any conditions attached to such a licence may appeal to a magistrates' court.*

- 7.3.4 The applicant may appeal against the decision of the Council if he is aggrieved by the decision. The appeal process is explained in section 5.2 above.

## **Health and Sustainability Impact Assessment**

- 7.4 Have you completed a Health and Sustainability Impact Assessment? No

7.5 If you have not completed an Impact Assessment, please explain your reasons:

No assessment has been completed as the hearing is in line with legislative guidance, the impact of which is deemed as having a neutral impact.

### **Equality and Diversity**

7.7 Have you completed an Equality Impact Analysis? No

7.8 If you have not completed an Impact Analysis, please explain your reasons:

No assessment has been completed as the hearing is in line with legislative guidance, the impact of which is deemed as having a neutral impact.

| <b>Risk Management</b>  | <b>Consequence</b>  | <b>Controls required</b>   |
|---|---|--|
| Should members be minded not to grant this application, their decisions may be overturned on appeal to the Magistrates Court. | Costs may be awarded against the Council should the appeal be upheld. | Members to be made aware that the applicant has a right of appeal. |

### **Contact Officers**

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### **Appendices Attached to this report**

| <b>Appendix No.</b> | <b>Name</b>                                       |
|---------------------|---|
| 1                   | Renewal Application and Engineers report          |
| 2                   | Historic MOT certificate Failure and Pass         |
| 3                   | MOT Certificate and Taxi Test 11 & 12 July 2022   |
| 4                   | Request to Depart from Policy                     |
| 5                   | Licensing Specialist Communication re MOT Failure |
| 6                   | Photos of vehicle taken on 18 July 2022           |

## BACKGROUND DOCUMENTS AVAILABLE

| Name of Background document  | Where it is available   |
|--|---|
| SLDC Hackney Carriage & Private Hire Licensing Policy 2018   | <a href="https://www.southlakeland.gov.uk/taxi-licensing-policy">Taxi Licensing Policy (southlakeland.gov.uk)</a>       |
| 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> |
| Revised Taxi Licencing Policy Approved 4 July 2022, implantation after Overview and Scrutiny Committee on 26 August 2022 | <a href="https://www.southlakeland.gov.uk/taxi-licensing-policy">Taxi Licensing Policy (southlakeland.gov.uk)</a>       |

## Tracking Information

| Signed off by       | Date sent  | Date Signed off |
|---------------------|------------|-----------------|
| Section 151 Officer | 22.07.2022 | 28.07.2022      |
| Monitoring Officer  | 22.07.2022 | 02.08.2022      |
| CMT                 | 22.07.2022 | 01.08.2022      |

| Circulated to                   | Date sent  |
|---------------------------------|------------|
| Principal Specialist            | 21.07.2022 |
| 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        |