



Agenda

Licensing and Regulatory Committee

Wednesday, 2 February 2022 at 7.30 pm

New Council Chamber, Town Hall, Reigate



This meeting will take place in accordance with Government guidance. The Committee will assemble at the Town Hall, Reigate. Members of the public, Officers and Visiting Members should attend remotely.

Please wear a face covering at all times in the chamber, except when you are speaking, or, if you are seated at least 2 metres distance from others.



Members of the public may observe the proceedings live on the Council's [website](#).

Members:

F. Kelly (Chairman)

R. Absalom
Z. Cooper
M. Elbourne
R. J. Feeney
R. Harper
J. Hudson

A. M. Lynch
K. Sachdeva
S. Sinden
R. S. Turner
D. Torra

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Substitutes:

Conservatives: R. H. Ashford, A. King, J. P. King and S. Parnall

Residents Group: G. Adamson and P. Harp

Green Party: J. Booton, P. Chandler, J. C. S. Essex, S. McKenna and R. Ritter

Liberal Democrats J. E. Philpott

Mari Roberts-Wood
Head of Paid Service

- 1. Minutes** (To Follow)
To confirm as a correct record the minutes of the previous meeting.
- 2. Apologies for absence**
To note any apologies.
- 3. Declarations of interest**
To note any declarations of interest.
- 4. Licensing and Regulatory Committee Procedure** (Pages 5 - 6)
To note the attached procedure which will be followed by the Licensing and Regulatory Committee, at the discretion of the Chairman, when considering the application at agenda item 5.
- 5. Application for a Private Hire Vehicle Licence** (Pages 7 - 46)
To determine whether a motor tricycle is suitable to be licensed as private hire vehicle.
- 6. Any other urgent business**
To consider any item(s) which, in the opinion of the Chairman, should be considered as a matter of urgency.



Our meetings

As we would all appreciate, our meetings will be conducted in a spirit of mutual respect and trust, working together for the benefit of our Community and the Council, and in accordance with our Member Code of Conduct. Courtesy will be shown to all those taking part.



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Notice is given of the intention to hold any part of this meeting in private for consideration of any reports containing "exempt" information, which will be marked accordingly.

PROCEDURE NOTE

at meetings of the Regulatory Committee
to consider Private Hire and Hackney Carriage applications

1. The Chairman will introduce him/herself, the Committee and Officers present.
2. The Chairman will invite the applicant to introduce him/herself, any persons accompanying him/her and confirm in what capacity they are present.
 - (a) **if the applicant is unaccompanied** the Chairman will remind him/her of the right to be represented or accompanied;
 - (b) **if the applicant is accompanied** the Chairman will ask who will be presenting the application before the Committee.
3. The Chairman will invite the responsible Officer to summarise the application.
4. The Chairman will invite the applicant (*or representative*) to make submissions.
5. The Chairman will open the floor to the Committee to put questions

Note:

Questions may be put to all parties, including the applicant and/or representative, and Officers.

5. The Chairman will ask the Officer if he/she has anything further to add.
6. The Chairman will invite the applicant [*or representative*] to make a closing statement.
7. The Chairman will adjourn the meeting and invite all parties, with the exception of the Legal Advisor to the Committee, to withdraw whilst the Committee deliberates in private session.
8. The Chairman will reconvene the meeting and give the Committee's decision, including any conditions if the licence is granted.
9. In all cases the Chairman will give the reason(s) for the decision.

Note:

The applicant will be advised of the decision in writing and, where relevant, will be notified of any rights of appeal.

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REPORT OF:	HEAD OF NEIGHBOURHOOD OPERATIONS
AUTHOR:	PAUL MOREY
TELEPHONE:	01737 276622
E-MAIL:	Paul.Morey@reigate-banstead.gov.uk
TO:	LICENSING & REGULATORY COMMITTEE
DATE:	

AGENDA ITEM NO:		WARD(S) AFFECTED:	ALL
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SUBJECT:	APPLICATION FOR A PRIVATE HIRE VEHICLE LICENCE
PURPOSE OF THE REPORT:	TO DETERMINE WHETHER A MOTOR TRICYCLE IS SUITABLE TO BE LICENSED AS A PRIVATE HIRE VEHICLE

OPTIONS

The Committee has the following options:

1. To grant the licence subject to such conditions as are consistent with the safe operating of the vehicle that ensure the safety of the fee-paying public.
2. To reject the application.

The Committee has authority to determine the above options.

Background

1. An application has been made by a Mr. Martin Ordish to licence a Private Hire Vehicle (PHV), see appendix 1, The vehicle is a Rewaco RF1 Motor Tricycle (Trike) purpose built with three seats. It has a 1499cc engine with similar controls to that of a car (clutch, brake, accelerator, gear change) but the steering is by handlebars. The vehicle is classified as a motor car and can normally be driven by anyone with a full UK driving licence, providing they passed their driving test prior to 19 January 2013, following which the Driving and Vehicle Standard Agency (DVSA) issued new driving rules for mopeds, motorcycles, and tricycles. Once licensed the vehicle can only be driven by a licensed private hire driver who also satisfies the criteria.
2. Mr Ordish's proposed business plan, should the application for a PHV licence be accepted, is to provide pre-booked tours around the borough and local landmarks. Provision of sightseeing tours of this nature are usually carried out by Public Service Vehicle (PSV) operators issued by DVSA. A small-scale restricted PSV licence which would allow the use of two vehicles carrying no

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more than eight passengers, would only be available if the proposed use was a side-line to another business which does not involve passenger transport.

3. For reference there are no other motorcycles or motor tricycles, licensed by Reigate and Banstead council.
4. The 'Key issues' paragraph identifies the major consideration of public safety. The 'Policy and Legislation' paragraphs provides members with published guidance and case law covering the legal requirements. Both highlight previous applications and the legislation placed on private hire drivers and operators in providing services to all members of the local community.

Key issues

5. The council's current Private Vehicles, Drivers and Operators Policy (February 2018) is based on a private hire vehicle which is a four wheeled vehicle with doors and windows. As such a motor tricycle does not conform to many of the current standard conditions attached to the operation of a Private Hire vehicle. In considering the application a different view is required on appropriate safety measures, as the passengers are not carried inside it, but on the vehicle.
6. The vehicle fails to meet most of the vehicle criteria of our current licensing policy. The most notable failings, which have a direct bearing on the safety and comfort of users, have been listed below in descending order of officer concern

Main Policy issues

- MOT/ Mechanical inspection, as a Class 3 vehicle, our current inspection regime at the Eastwood depot would be unable to carry out inspection or provide an MOT certificate for these types of vehicles,
- Absence of 'Solid roof which must be kept watertight. Convertibles or soft-tops will not be allowed but sunroofs may be permitted if not in excess of 50% of the roof area',
- A minimum of 4, maximum of 8 seats to be provided. Individual seats must be at least 41cm wide (37cm). A seat for 3 passengers must be at least 127cm wide,
- Minimum 1600cc or 75 BHP (55KW) from one engine source if less,
- Provision of a spare wheel: The vehicle must carry a spare wheel or temporary spare wheel in good working order and tools to change a wheel in the event of a puncture (with the equipment meeting the manufacturer's approved specification). A temporary spare wheel shall only be used to complete the current journey and shall be replaced with a standard wheel before a subsequent hiring. (Due to the difference in size of the tyres used on the vehicle this would require 2 replacement wheels are carried.)
- A fire extinguisher must be visible and available for immediate use or a sign should be visible stating where it is stored.
 - a) suitable motorist's first aid kit should be retained in the vehicle, as approved by a Council officer.

b) It must be carried in such a position as to be readily visible and available for immediate use in an emergency or a sign must be visible stating where it is stored.

Minor policy issues

- Interior identification signs: A sign displaying the number of the licence and the number of passengers prescribed in the licence must be clearly marked and maintained inside the vehicle in such a position as to be visible at all times to persons conveyed therein
 - A double-sided small version of the licence plate must be placed inside the windscreen or nearside front window, as directed.
 - Doors and windows
 - (a) The rear emergency door, where fitted, shall have the means of operation (e.g. 'pull', 'turn clockwise') marked on the inside and outside. The emergency door shall be openable from both outside and inside. No vehicle shall be fitted with an emergency door, which can be locked from the outside unless, when so locked, it is capable of being opened from inside the vehicle when stationary.
 - (b) The vehicle must have the appropriate number of doors to allow safe access and egress for the number of passengers it is licensed to carry.
7. Should the decision be made to grant a private hire licence for this vehicle, appropriate additional conditions may be attached to the licence. Such conditions would need to include clear safety conditions and requirements for the operation of the service. As the vehicle is a Group 3 classification, it would also require that, a nominated MOT Station is identified and appointed as our agent for inspection and issue of an MOT.
8. Whilst the safety of passengers on the vehicle is dealt with in greater detail below, the Committee in making their decision must put the issues of safety beyond any other. The Department of Transport whilst providing guidance on the licensing of motorbikes and other vehicles also stresses this point.
9. It should be noted that should a private hire vehicle licence be granted, once an operator's and driver's licence have been obtained, the holder will be entitled to operate a normal private hire business within the borough.

Legislation and Guidance

10. The licensing of Private Hire and Hackney Carriage Vehicles is controlled by various legislation, notably the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. This legislation also places a responsibility on the operators of these vehicles, with regards to providing

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services to all sectors of the borough's community. To assist the committee in their deliberations, the relevant sections of this legislation have been included below along with guidance from the Department of Transport and a stated case relating to the licensing of motorbikes and other vehicles.

11. The Council issues licences for private hire vehicles subject to prescribed conditions under the provisions of Section 48 Local Government (Miscellaneous Provisions) Act 1976. Section 48 states that a district council shall not grant such a licence unless they are satisfied 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.

Once the issuing council is satisfied the vehicle fulfils the above requirements, they may issue a private hire licence subject to such conditions as they see fit regarding safety.

12. A relevant case regarding the issue of what is considered to be safe, can be found in a reported case 'Chauffeur Bikes Ltd v Leeds City Council (2005) EWHC 2369 (Admin), see appendix 2. Whilst this case deals primarily with an application to license a motorbike it does however contain salient points, which may assist the Committee in their deliberations.

13. In that case, the applicant company wished to operate a motorcycle, designed to carry a passenger, as a private hire vehicle. It applied to the respondent council for a private hire vehicle licence to be granted, pursuant to Section 48 of the Local Government (Miscellaneous Provisions) Act 1976, but the council refused the application. The applicant appealed successfully to the magistrates' court. On the council's appeal against that decision, the Crown Court held that it was necessary, under s.48(1)(a), to consider not just whether the motorcycle in question was safe in itself, but whether it was safe for use as a private hire vehicle. The Crown Court concluded that the motorcycle was not safe for use as a private hire vehicle and that, therefore, the licence should be refused, and the appeal allowed.

14. The applicant appealed against the Crown Court's decision to the Queen's Bench Division of the High Court. That Court held that, under s.48(1)(a)(i) of the Local Government (Miscellaneous Provisions) Act 1976, if a vehicle, because of its type, size or design, was unsafe to be used as a private hire vehicle, then it was unsuitable for such use. They held that, therefore, a motorcycle could be in a safe condition for a motorcycle but it could still, for safety reasons, be judged to be unsuitable in type, size or design for private

hire use, and that, on the evidence, the Crown Court had been entitled to find that the motorcycle in question was unsuitable and unsafe for private hire use. The Queen's Bench Division therefore upheld the Crown Court's decision that the licence should be refused.

15. In respect of Section 160 of the Equalities Act 2010, the trike would not be suitable to be listed as a Wheelchair Accessible Vehicle (WAV) and as such the driver would not be required to accommodate a passenger travelling with a wheelchair.
16. However, under Section 171 Equalities Act 2010, operators, and drivers of a licensed PHV are not permitted to refuse a booking by a disabled passenger who is accompanied by an assistance dog. It does however provide an exemption for drivers who are allergic to dogs or who have some other valid medical reason for not accepting dogs in their vehicle.

It provides that:

“(1) A licensing authority must issue a driver with a certificate exempting the driver from the offence under section 170(3) (an “exemption certificate”) if satisfied that it is appropriate to do so on medical grounds.

(2) In deciding whether to issue an exemption certificate the authority must have regard, in particular, to the physical characteristics of the private hire vehicle which the person drives or those of any kind of private hire vehicle in relation to which the person requires the certificate.

(3) An exemption certificate is valid

(a) in respect of a specified private hire vehicle or a specified kind of private hire vehicle;

(b) for such period as is specified in the certificate.”

17. The wording of the section above is ambiguous regarding vehicles, but it is clear that the only reason for granting an exemption to the driver is on medical grounds. It does not provide for any exemption based on the type of vehicle.
18. The prospective operator plans that dogs will be permitted to travel on the vehicle using appropriate harnesses. Given the nature of the vehicle, there are questions about whether it would be safe to accommodate an assistance dog on a trike. The views of the Guide Dogs for the Blind Association have previously been sought on this issue and they responded that safety should be the paramount consideration.

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19. Rule 57 of the Highway Code does not prohibit dogs and other animals from travelling in vehicles, however they recommend that animals are to be suitably restrained. Rule 57 provides some advice about various restraint methods in respect of cars; but it is silent regarding motorised tricycles and therefore it is not clear whether any of those counselled would be suitable for the proposed vehicle:

“When in a vehicle make sure dogs or other animals are suitably restrained so they cannot distract you while you are driving or injure you, or themselves, if you stop quickly. A seat belt harness, pet carrier, dog cage or dog guard are ways of restraining animals in cars.”

20. Whilst restraints for dogs are available and being provided by the operator, research has shown that these are designed to be attached to the upright (shoulder) strap of a 3-point safety harness, secure points in the vehicle or to use an available seat belt anchor point. The safety harness fitted on the applicant's trike are lap belts. Its needs to be considered as to whether these would provide appropriate or safe anchorage for the animals and provide for their safety as well as all those on board the vehicle.

Policy and Legal Considerations

21. Relevant to this application are, Section 48 Local Government (Miscellaneous Provisions) Act 1976. Section 171 The Equality Act 2010. Leeds City Council v Chauffeur Bikes Ltd [2006] R.T.R. 7. Private Hire Vehicles, Drivers and Operators Conditions February 2018, Department of Transport guidance ‘Licencing motorcycles as private hire vehicles’ July 2012 <https://www.gov.uk/government/publications/licensing-motorcycles-as-private-hire-vehicles/licensing-motorcycles-as-private-hire-vehicles-a-guidance-note-from-the-department-for-transport>.

Small PSV operators <https://www.gov.uk/psv-operator-licences>

Appeals Procedure

22. In cases where an application for a Private Hire Vehicle is refused an appeal may be made to the Magistrates Court within 21 days beginning with the day on which the appellant was notified of the decision. The rights of appeal are available to the applicant, in cases where the application is refused.

Background Papers: None

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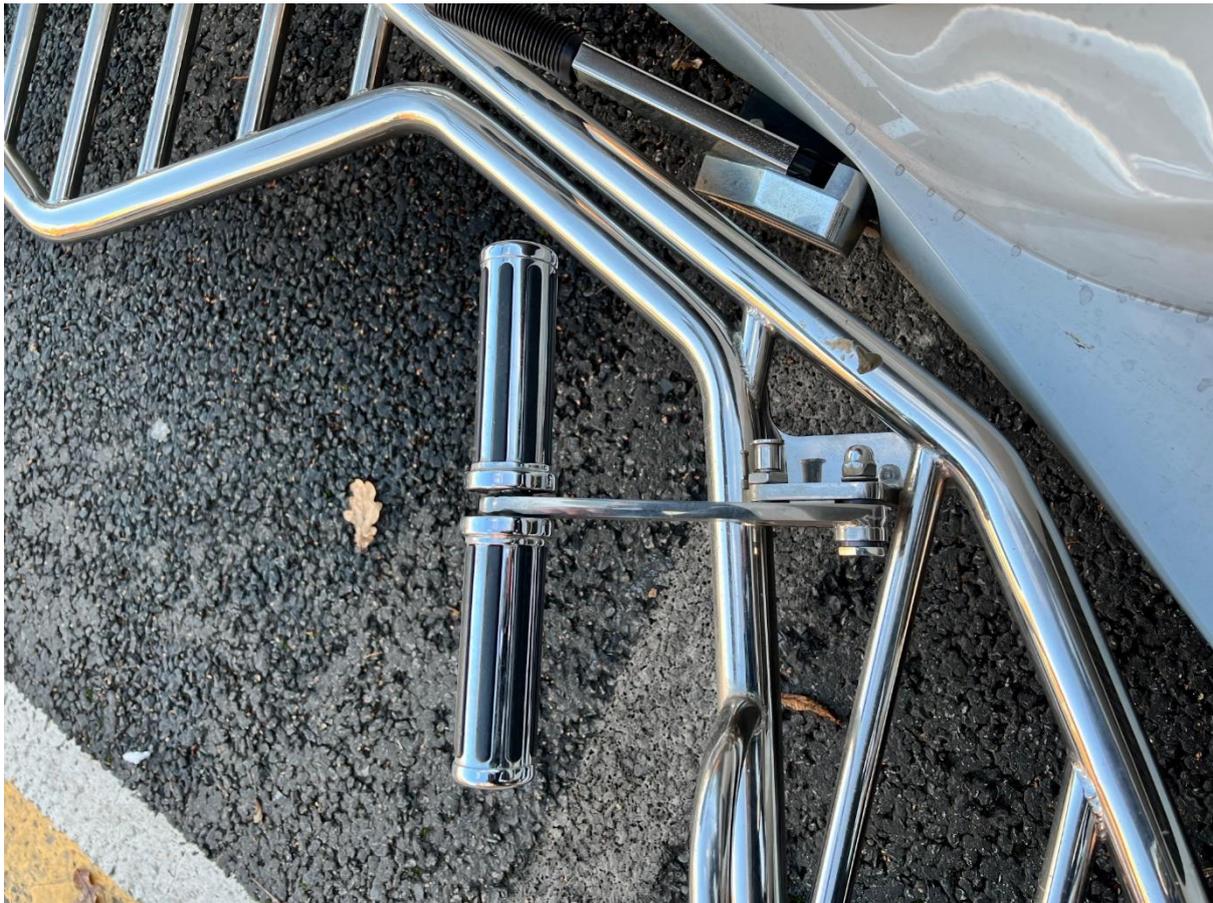
MOTORTRIKE PRIVATE HIRE APPLICATION PACK 3



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*74 **Chauffeur Bikes Ltd v Leeds City Council**



No Substantial Judicial Treatment

Court

Divisional Court

Judgment Date

12 October 2005

Report Citation

[2005] EWHC 2369 (Admin)

[2006] R.T.R. 7

Queen’s Bench Divisional Court

(Keene L.J. and Poole J.):

October 12, 2005

Licences; Motorcycles; Private hire vehicles; Safety; Suitability;

H1 LICENSING

H1. Private hire vehicle

H1.

Suitability for use—Application for private hire vehicle licence for motorcycle—Council’s refusal to grant licence upheld on ground motorcycle unsafe for such use—Whether safety relevant when considering suitability for proposed use— [Local Government \(Miscellaneous Provisions\) Act 1976, s.48\(1\)\(a\)](#) .

H2. [Section 48\(1\) of the Local Government \(Miscellaneous Provisions\) Act 1976](#) provides:

“Subject to the provisions of this Part of this Act, a district council may on the receipt of an application from the proprietor of any vehicle for the grant in respect of such vehicle of a licence to use the vehicle as a private hire vehicle, grant in respect thereof a vehicle licence: Provided 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 ...”

H3. [Section 80\(1\)](#) provides:

“... ‘private hire vehicle’ means a motor vehicle constructed or adapted to seat fewer than eight passengers, other than a hackney carriage or public service vehicle, which is provided for hire with the services of a driver for the purpose of

carrying passengers.”

H4. The applicant company wished to operate a motorcycle, designed to carry a passenger, as a private hire vehicle. It applied to the respondent council for a private hire vehicle licence to be granted, pursuant to [s.48 of the Local Government \(Miscellaneous Provisions\) Act 1976](#) , but the council refused the application. The applicant appealed successfully to the magistrates’ court. On the council’s appeal against that decision, the Crown Court held that it was necessary, under [s.48\(1\)\(a\)](#) , to consider not just whether the motorcycle in question was safe in itself but whether it was safe for use as a private hire vehicle and it concluded that it was not and that, therefore, the licence should be refused and the appeal allowed. *75

H5. On the applicant’s appeal:

H6. Held, dismissing the appeal, that, under [s.48\(1\)\(a\)\(i\) of the Local Government \(Miscellaneous Provisions\) Act 1976](#) , if a vehicle, because of its type, size or design, was unsafe to be used as a private hire vehicle, then it was unsuitable for such use; that, therefore, a motorcycle could be in a safe condition for a motorcycle but it could still, for safety reasons, be judged to be unsuitable in type, size or design for private hire use ([18]); and that, on the evidence, the Crown Court had been entitled to find that the motorcycle in question was unsuitable and unsafe for private hire use ([19], [23]).

H7 No cases were referred to in the judgments or cited in argument.

Case stated by the Crown Court at Leeds (Mr Recorder Roberts and two justices)

CS1. On October 26, 2004 the court heard an appeal by Leeds City Council against a decision of the Leeds Magistrates’ Court on February 18, 2004.

CS2. The decision of the magistrates’ court was to allow the appeal of the applicant, Chauffeur Bikes Ltd, against a decision by the prosecutor’s licensing committee to refuse an application by the applicant for a private hire vehicle licence for a Pan-European Honda touring motorcycle.

CS3. The court heard evidence from Paul Varnsferry, Police Sergeant Thompson and Desmond Broster on behalf of the prosecutor, and from Bryan Roland and Colin Dale on behalf of the applicant. In addition the court had the benefit of a bundle of reports and other documentation which was also received in evidence at the hearing of the appeal.

CS4. The licensing regime for private hire vehicles was to be found in the [Local Government \(Miscellaneous Provisions\) Act 1976](#) . In particular [s.48](#) of that Act dealt with the licensing of private hire vehicles. [The case stated set out [s.48\(1\)\(2\)](#) and continued:]

CS5. It was necessary for the court to determine a number of issues of law raised by both the council and the applicant.

CS6. The competing submissions summarised briefly were as follows. (a) The council submitted that the legislature never intended motorcycles to be considered for use as private hire vehicles at all. The main basis for that submission was that in [s.51\(1\)\(b\)](#), which dealt with driver licensing, it was a requirement for an applicant for a private hire driver's licence to have been authorised to drive a motor car for at least 12 months. Subject to that primary submission, the council further submitted that there was an overlap between the issues of "suitability" and safety in [s.48\(1\)\(a\)\(i\) and \(iv\)](#). (b) The applicant submitted that there was no overlap between "suitability" and "safety". The applicant further argued that a restrictive approach should be taken to the criteria set out in [s.48\(1\)\(a\)](#). For example, it was submitted that "safe" did not mean safe as a private hire vehicle, because those words had been deliberately omitted from [s.48\(1\)\(a\)\(iv\)](#) by the draftsman. That [*76](#) contrasted with [s.48\(1\)\(a\)\(i\)](#) which specifically required suitability to be considered in the context of use as a private hire vehicle.

CS7. The court's determination of the issues of law were as follows. (i) [Section 48\(1\)](#) referred to "any vehicle" in the context of licensing private hire vehicles. In the judgment of the court, that allowed consideration of the proposed use of a motorcycle as a private hire vehicle. (ii) Although the court accepted that in [s.51](#) of the 1976 Act the draftsman did not consider the position in relation to other types of vehicle licences apart from a licence to drive motor cars, in the judgment of the court, that was not a safe basis for construing either the intention of the legislature or other sections of the same Act. A simple oversight by the draftsman was not a matter from which any inference could be drawn either as to statutory construction or disposition towards one type of a vehicle or another. (iii) There was an overlap between "suitability" and "safety". In the judgment of the court, the court's discretion had to be exercised with a view to the ultimate use of the vehicle as a private hire vehicle. That end objective had to inform the court's consideration of all the criteria in [s.48\(1\)\(a\)](#). (iv) The issues of "suitability" and "safety" were inexplicably intertwined, and the court would not be performing its task under [s.48](#) (in an appellate capacity) if it were to deconstruct the words of [s.48](#) to the extent that they lost the primary meaning which Parliament intended to invest in them. (v) It was a contradiction in terms to take a restrictive view of what was safe because when considering what was safe it was necessary to have regard to all factors in their proper context.

CS8. Against the determination of the issues of law that governed the court's approach to the issue of the licensing of the particular vehicle as a private hire vehicle, the court made the following findings of fact. (i) People sat on a motorcycle not in it. (ii) The contribution to the weight of the machine by adding a passenger and the positioning of the weight of that passenger could affect the handling of the machine. (iii) Those carried on the machine were exposed to the weather. (iv) The only conceivable protection against injury in the event of an accident consisted of the clothing and helmet worn by the rider. (v) The surface area of the tyres in contact with the road was comparatively small. (vi) The motorcycle was susceptible to side winds because of its two-wheeled configuration and its side area. (vii) Inexperienced passengers might intuitively counterbalance against the leaning over motion of a motorcycle by sitting upright in a way which might destabilise the machine. (viii) Inexperienced passengers might react unexpectedly during the course of exposure to the ordinary incidents of motorcycle riding and thus create a dangerous situation. (ix) A motorcycle driver might have to react suddenly to a gust of wind, a slippery surface or a motorist who had not seen him. The presence of an inexperienced passenger on the machine at that time who was not reading the road ahead might make the difference between a recovery from that situation and losing the balance of the machine resulting in an accident. (x) Sudden adverse weather conditions might affect the stability of the bike, and there was no way of predicting sudden changes in weather. No condition could be attached to any licence that could guard against that potential danger. (xi) The application made by the applicant had been thoroughly researched, conscientiously presented and plainly made with the best of intentions, seeking to [*77](#) co-operate with the council in providing as safe a service as it would be possible to provide based on the use of a two-wheeled motorcycle.

CS9. In the light of the foregoing determination of issues of law and findings of fact, in the court's judgment, the proposal to use the Honda Pan-European motorcycle as a private hire vehicle in Leeds should be refused because it was unsuitable

and unsafe for such use.

CS10. The granting of such a licence would be viewed by the public as an endorsement of that form of transport as a private hire vehicle and would encourage them to think that the dangerous potential which had been demonstrated to the court on the evidence for an accident had been carefully weighed and discounted to the extent they could be assured of safe and suitable transport in such a vehicle.

CS11. Whilst that would necessarily represent a commercial advantage to the operator, it would not reflect the preponderance of the evidence which the court had heard as to the fragility of the safety of such machines for use in the particular way with potentially inexperienced passengers in potentially all sorts of adverse conditions.

CS12. Accordingly, the appeal was allowed.

CS13. The applicant appealed.

CS14. The questions for the opinion of the court were: (1) whether the Crown Court erred in finding that the requirements of [s.48\(1\)\(a\)\(i\)](#) and [\(iv\)](#) of the 1976 Act overlapped; (2) whether the Crown Court erred in finding that the meaning of “safe” within [s.48\(1\)\(a\)\(iv\)](#) meant safe for use as a private hire vehicle; and (3) whether the Crown Court erred in finding that the vehicle in respect of which a private hire licence was sought, namely a Honda Pan-European motorcycle, was unsuitable and unsafe for use as a private hire vehicle.

H8Representation

Peter Maddox for the applicant company.
Ruth Stockley for the council.

H9 Representation

Solicitors for the company: Kearns & Co , Swansea.
Solicitors for the council: Solicitor, Leeds City Council .

JUDGMENT

KEENE L.J.

1. This is an appeal by way of case stated from the decision of the Crown Court at Leeds dated October 26, 2004. It concerns the licensing of a motorcycle as a private hire vehicle. The appellant sought a licence for a Honda Pan-European touring motorcycle for use as a private hire vehicle. The respondent local authority, the Leeds City Council, refused the application, but the matter was then taken on appeal to the Leeds Magistrates’ Court, which allowed the appeal. However, the local authority then appealed successfully to the Crown Court.

2. The local authority is given the power to grant or refuse private hire licences by [s.48\(1\) of the Local Government](#)

(Miscellaneous Provisions) Act 1976 (“the 1976 Act”). The proviso to that subsection, however, prevents the local authority from granting such a licence unless it is satisfied as to certain matters. The proviso reads as follows, in so far as it is relevant for the purposes of this appeal:

“Provided 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 *78 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. Such a licence may be granted in respect of a “vehicle” and there is now no dispute that that word in itself does not exclude motorcycles. Indeed a motorcycle could, on the face of the language, come within the terms of the definition of a private hire vehicle, a definition to be found in s.80(1) of the 1976 Act. That states that private hire vehicle: “means a motor vehicle constructed or adapted to seat fewer than eight passengers, other than a hackney carriage or public service vehicle, which is provided for hire with the services of a driver for the purpose of carrying passengers.”

4. The issue in the present case centres on the question of safety. The Crown Court heard oral evidence from both sides, and it had a number of reports before it. As a result, it concluded that a private hire licence should be refused for the Honda motorcycle because it was unsuitable and unsafe for use as a private hire vehicle.

5. It is clear that the court’s conclusion as to unsuitability was based on safety considerations. The case stated refers to a number of factors in that connection, for example:

“Design features

- (i) People sit on the motorcycle not in it.
- (ii) The contribution to the weight of the machine by adding a passenger and the positioning of the weight of that passenger can affect the handling of the machine ...
- (v) The surface area of the tyres in contact with the road is comparatively small.
- (vi) The motorcycle is susceptible to side winds because of its two wheeled configuration and its side area.

Safety issues

- (vii) Inexperienced passengers may intuitively counterbalance against the leaning over motion of a motorcycle by sitting upright in a way which may destabilise the machine.
- (viii) Inexperienced passengers may react unexpectedly during the course of exposure to the ordinary incidents of motorcycle riding and thus create a dangerous situation.”

There is also reference to the effect of adverse weather conditions and the reaction of inexperienced passengers to a slippery road surface and to other hazards.

6. In addition to its conclusion on safety, as judged objectively, the case also comments at [CS10] as follows:

“The granting of such a licence would be viewed by the public as an endorsement of this form of transport as a private hire vehicle, and would *79 encourage them to think that the dangerous potential which has been demonstrated to us on the evidence for an accident has been carefully weighed and discounted to the extent they can be assured of safe and suitable transport in such a vehicle.”

7. It was argued before the Crown Court, as it has been before us, that the word “safe” in s.48(1)(a)(iv) means safe per se rather than safe for use as a private hire vehicle, because the words “for use as a private hire vehicle”, which one finds in subpara.(i) when dealing with suitability, do not appear in subpara.(iv) where safety is referred to. Therefore subpara.(iv) is confined to considering whether the vehicle is safe in itself.

8. The argument then put before the Crown Court was that, since safety was specifically dealt with in subpara.(iv), it could not be taken into account when considering whether the vehicle was “suitable in type, size and design for use as a private hire vehicle” under subpara.(i). Put very succinctly, it was said that the two subparagraphs, (i) and (iv), did not overlap.

9. The Crown Court rejected that argument. It decided that there was such an overlap between “suitability” and “safety”. In the case stated at [CS7(iii)] the Crown Court says that the powers must be exercised “with a view for the ultimate use of the vehicle as a private hire vehicle and always in regard to that ultimate use of the vehicle.”

10. The questions posed for the opinion of this court are as follows:

“(i) Whether the Crown Court erred in finding that the requirements of section 48(i)(a)(i) and (iv) of the 1976 Act overlapped.

(ii) Whether the Crown Court erred in finding that the meaning of ‘safe’ within section 48(1)(a)(iv) meant safe for use as a private hire vehicle.

(iii) Whether the Crown Court erred in finding that the vehicle in respect of which a private hire licence was sought, namely a Honda Pan-European motorcycle, was unsuitable and unsafe for use as a private hire vehicle.”

11. On behalf of the appellant Mr Maddox submits that s.48(1)(a) lists five matters separately, and that they should therefore be considered separately. In an attractively presented argument this morning he has contended that “suitability” in subpara.(i) does not cover safety. If it did, subpara.(iv) would be redundant. Suitability, it is said, is concerned with whether the vehicle is capable of being used as a private hire vehicle, which this motorcycle is because it is designed to carry a passenger.

12. Mr Maddox contends that if a vehicle is capable of carrying a passenger then that is sufficient. Moreover, it is argued

that “safe” in subpara.(iv) is not to be considered in terms of the proposed use as a private hire vehicle; had that been the intention, Parliament would have said so, as it has done with the words in subpara.(i).

13. Mr Maddox also attacks the factual conclusion reached by the Crown Court. He submits, principally, in his written argument (on which he has touched briefly and orally this morning) that the court wrongly adopted a comparative approach and *80 that its findings merely show that in certain conditions travelling on a motorcycle may be less safe than a car, but it does not follow that it is unsafe.

14. It is also said that the Crown Court was wrong to conclude at [CS10] of the case (which I have quoted earlier) that the granting of a licence amounted to some form of endorsement of the motorcycle. The granting of a licence does not assure safety, but it is merely an indication that the statutory requirements are satisfied.

15. The thrust of Mr Maddox’s argument, and indeed the effect of it, is that the district council and any court on appeal cannot lawfully consider whether the vehicle in question is safe for use as a private hire vehicle in terms of its type, size and design. The argument, as I have indicated, amounts to saying that safety in subpara.(iv) only concerns the safety of the vehicle in itself, and subpara.(i) does not include safety when considering suitability as a private hire vehicle.

16. Of course if that argument is right, the result would be that safety for the proposed use in terms of type, size or design of vehicle would not be a relevant consideration when such licences are being dealt with. That indeed is the objective which the appellant seeks to obtain.

17. It seems to me that, despite all the skill and ingenuity displayed by Mr Maddox, the proposition only has to be stated for its absurdity to be manifest. It is inconceivable that Parliament did not intend the safety of the vehicle in these respects for such use as a private hire vehicle to be taken into account. If the appellant was right, a licence under s.48 could be granted for a vehicle whose size or design made it unsafe for such use, and I cannot see that that could have been intended.

18. It *may* be that the narrow construction of the word “safe” in subpara.(iv), as put forward by the appellant, is right. In other words, that subparagraph may be concerned as a criterion with whether the vehicle in question, which in terms of type, size and design is entirely suitable for private hire use, is actually safe in all respects; so that if, for example, the seatbelts in a car were too worn the vehicle would fail subpara.(iv). However that does not greatly assist the appellant. I am quite satisfied that, if that construction were right, subpara.(i) when it refers to suitability in terms of type, size and design for such use brings in safety as a relevant consideration. If, because of any of those factors of type, size and design, the vehicle is unsafe to be used as a private hire vehicle, then it is unsuitable for such use. Consequently a vehicle may be in a safe condition for a vehicle of its type, size and design (as this motorcycle apparently was) with the result that there was nothing wrong with its safety as motorcycles go; but it could still for safety reasons be judged to be unsuitable in type, size or design for private hire use.

19. As to the Crown Court’s finding that this vehicle was unsuitable and unsafe for private hire use, I cannot see that its conclusion was not open to it. It did not do any comparative exercise, i.e. merely comparing the motorcycle with a car. Most of its specific findings related simply to the safety for such a use of this motorcycle. Certainly, given that it had both oral and written evidence before it, one cannot say that the court reached an impermissible conclusion.

20. I recognise that motorcycles regularly carry pillion passengers in modern use and that they do so lawfully, implying that the process is not to be seen as inherently unsafe. But in such private activity the driver and the passenger would normally be known to one another and there would be the opportunity to take *81 precautions to assess experience and to give instructions. Private hire vehicles carry ordinary members of the public who would usually be previously unknown to the driver to any significant degree. It is therefore quite a different context. In that context, there was nothing wrong in the Crown Court's comment at [CS10] of the case stated (cited earlier), where in essence it suggested that the grant of a licence would indicate to the public that the private hire use of this motorcycle had been found to be safe. That would indeed be the case. The Crown Court's conclusion overall was not outside the range of conclusions which could reasonably be reached on the evidence it had.

21. Dealing finally with the questions posed in the case, I would answer question (i) in the negative in so far as subpara.(i) of s.48(1)(a) does embrace safety in the way outlined earlier. It is part of suitability for such proposed use. It then becomes unnecessary to give a definite answer to question (ii) about the meaning of "safe" within the meaning of s.48(1)(a)(iv) , although I have given an indication as to the way my mind approaches that matter earlier in this judgment. Question (iii) again should be answered in the negative.

22. For these reasons I, for my part, would dismiss this appeal.

POOLE J.

23. I agree.

24. This argument has been attractively presented by Mr Maddox. He makes the point that there is no reason to regard the vehicle under consideration as being unsafe in itself. Does it therefore become unsafe because people are prepared to go on it? The answer, or part of it, is, I think, that the legislation, namely the 1976 Act, permits district councils individually to consider that question. The fact that a district council, say in Kent, may come to one conclusion (as we are told was the case) does not oblige one in Yorkshire to do the same. Nor does Mr Maddox argue otherwise.

25. The question, therefore, is whether the Crown Court at Leeds erred in law in its determination of the questions stated for the opinion of the High Court at [CS14(i),(ii) and (iii)] of the case stated. In my judgment it did not. The question, as I see it, resolves itself into a simple one, namely, whether the words "suitability of type, size and design for use as a private hire vehicle" under s.48(1)(a)(i) permit the court to consider the question of safety under that subsection, given that subs.(1)(a)(iv) specifically deals with the question of safety.

26. For my part I am satisfied that it does permit such consideration. It would be extraordinary, in my view, if the court, though satisfied that the machine was safe as being well constructed and maintained, were precluded from going on to consider its safety for use as a private hire vehicle when considering its suitability for such use. Parliament cannot, I believe, have intended such a limitation, and I would refuse this appeal.

Reported by Jill Sutherland, Barrister. *82

Appeal dismissed with costs.

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Supplementary Information – Agenda Item 5



REPORT OF:	HEAD OF NEIGHBOURHOOD OPERATIONS
AUTHOR:	PAUL MOREY
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TO:	LICENSING & REGULATORY COMMITTEE
DATE:	

AGENDA ITEM NO:	5	WARD(S) AFFECTED:	ALL
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SUBJECT:	APPLICATION FOR A PRIVATE HIRE VEHICLE LICENCE
PURPOSE OF THE REPORT:	TO DETERMINE WHETHER A MOTOR TRICYCLE IS SUITABLE TO BE LICENSED AS A PRIVATE HIRE VEHICLE

OPTIONS

The Committee has the following options:

1. To grant the licence subject to such conditions as are consistent with the safe operating of the vehicle that ensure the safety of the fee-paying public.
2. To reject the application.

The Committee has authority to determine the above options.

Supplementary information for hearing

The applicant, Mr. Martin Ordish in response to receiving a copy of the committee report, has sent an email asking some questions. As both the Committee and Mr Ordish will be interested in the responses, I have answered the relevant questions below as a supplement to the report. For clarity I have numbered the questions 1 to 6 and highlighted them in italic writing. The answers are below each question.

1. *Q 'Not sure how significant the transmission details are but the motor tricycle has automatic transmission and therefore does not have a manual clutch; the V5 lists the vehicle as a tricycle and not a car.'*

A. The vehicle description was a generic example of the type of vehicle.

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2. Q *'In 2018, Whatcar reported that tyre maker Continental, recorded that motorists typically suffer a puncture every 44,000 miles, highlighting the very rare occurrence when a spare wheel might be necessary. A Whatcar survey, reviewing new vehicles and the provision of spare tyres, identified that 55% of manufacturers do not provide a spare wheel of any description, relying on the use of roadside tyre repair kits. Our motor tricycle is equipped with a tyre repair kit and we have roadside recovery cover, provided by the RAC. The safety and comfort of our customers is paramount, and we would provide return transportation, to a place of their choice, at our expense.'*

A. The 'Private Hire Vehicles, Drivers and Operators '(February 2018) conditions requires that:

Spare wheel; the vehicle must safety carry a spare wheel or temporary spare wheel in good working order and tools to change a wheel in the event of a puncture (with the equipment meeting the manufacturer's approved specification). A temporary spare wheel shall only be used to complete the current journey and shall be replaced with a standard wheel before a subsequent hiring.

There are no current plans to change this requirement for any vehicle registered as a private hire vehicle in Reigate and Banstead.

3. Q *'As our vehicle is not a motorcycle or car, is it considered as "other" under the legislation or does this legislation not apply?' (Initially unable to answer question as reference to legislation was not clear)*

A. Email received 23 January 2022 in which Mr Ordish explained his enquiry in question 3. This information was sent by email to Mr Ordish 24 January 2022.

'The licensing of Private Hire and Hackney Carriage Vehicles is controlled by various legislation, notably the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. This legislation also places a responsibility on the operators of these vehicles, with regards to providing services to all sectors of the borough's community '

The use of 'these vehicles' in this context is referring to any vehicle that is licenced as a private hire vehicle (or Hackney Carriage vehicle). And that would include your trike should the Committee decide to licence it as a private hire vehicle.

4. Q *'We are unclear what the salient points are in the example, from 2005, of an unsuccessful licence application for a motorcycle which has been included. We would like the example accessed via the following link, to be included on the*

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grounds that it is entirely pertinent and representative of the licence we are seeking and was granted for a motor tricycle by the same council in 2013;
<https://democracy.leeds.gov.uk/ieDecisionDetails.aspx?ID=40298>

Links to documents, that detail the information on which the decision was based, can be found low down on the page; if you would like hard copies of any of this information, we can provide them. Motor tricycles have also been licensed in other countries of the UK. This link includes information on the decision to licence a motor tricycle by Orkney Council as an example.
[https://www.orkney.gov.uk/Files/Law-and-Licensing/Licences/Taxis-and-Private-Hire-Cars/Operators/Motorised Tricycle Private Hire Car Operator Conditions.pdf](https://www.orkney.gov.uk/Files/Law-and-Licensing/Licences/Taxis-and-Private-Hire-Cars/Operators/Motorised%20Tricycle%20Private%20Hire%20Car%20Operator%20Conditions.pdf)

- A. The case of Leeds City Council v Chauffeur Bikes Ltd [2006] R.T.R. 7 was included in the report as it contains salient points and because as a reported case it constitutes a legal precedent. The case highlights the fact that, although a vehicle may be considered safe in itself. It does not necessarily mean that under the Local Government (Miscellaneous Provisions) Act 1976 a licensing authority would consider that the vehicle was safe or appropriate for use as a private hire vehicle.

Although we noted the decision by Leeds City Council to licence a motor trike, it is not relevant to this hearing for 2 reasons. A) Leeds City Council did not have regard to the requirements of the Equalities Act 2010, which was not mentioned in their committee report. B) Reigate and Banstead Borough Council, in making any decision regarding the licensing of a Private Hire or Hackney Carriage vehicle, are not bound by any decision made by another licensing authority. Decisions made by other authorities are made on their own facts and do not constitute legal precedents. As such the decision by Leeds City Council has no bearing on the hearing.

As pointed out by Mr Ordish, the Orkney Islands are in Scotland. Vehicles licensed for private hire operation in Scotland are licensed under different legislation (Civic Government (Scotland) Act 1982). As such any decision or licence issued by a Scottish authority is not relevant to considerations of licensing in England.

5. *Q. Surrey and Sussex Trikes are not providing a drop off service for users. Our journeys are round trips from A to A and there is no requirement for users to exit the vehicle during the service. However at the time of booking, we clarify whether the presence of an assistance dog or mobility aid, would be required at our pre-arranged stops. If this is necessary, our support vehicle would deliver these again, at our expense. Passengers requiring this service would not be subject to higher charges.*

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- A. Whilst this does address concerns regarding the issues of the safety of dogs and passengers, it overlooks the fact that assistance dogs are used for a variety of reasons. These include dogs that identify when the owner is about to have seizures. The separation of any assistance dog from the owner is not appropriate as they not only carry out important functions but become close companions of the people involved.
6. *Q. There is mention that the vehicle, once licenced, could be operated as a regular PHV. We wish to make clear that we do not want to operate as a regular PHV but as a novelty vehicle.*
- A. Although you may not wish to offer your services as a standard private hire vehicle, it is nevertheless a fact that once licenced under the Local Government (Miscellaneous Provisions) Act 1976, you would be at liberty to do so.