



Reigate & Banstead
BOROUGH COUNCIL
Banstead | Horley | Redhill | Reigate

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

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

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.

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

