

Regulatory & Appeals Committee – 10 February 2020

Title of paper:	Application for Hackney Carriage Vehicle Licence – Converted Hyundai i800	
Director(s)/ Corporate Director(s):	Andrew Errington Director of Community Protection	Wards affected: All
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Date of consultation with Portfolio Holder(s) (if relevant)	N/A	
Relevant Council Plan Key Theme:		
Nottingham People		<input type="checkbox"/>
Living in Nottingham		<input checked="" type="checkbox"/>
Growing Nottingham		<input type="checkbox"/>
Respect for Nottingham		<input type="checkbox"/>
Serving Nottingham Better		<input type="checkbox"/>
Summary of issues (including benefits to citizens/service users):		
<p>In 1990 the Council first introduced its policy requiring all Hackney Carriages licensed by the City Council to be of a type approved by the London Public Carriage Office, wheelchair accessible and British Racing Green in colour. The Council subsequently adopted further policies relating to the age, specification and appearance of the hackney carriages it will licence.</p> <p>The Council is entitled to depart from its policies if it has good reason to, and the Council has already done so in the past. Over time a number of vehicle types have been included within the Council's Hackney Carriage Vehicle specification, which do not have London Public Carriage Office approval, but otherwise meet the aims and safety requirements of the Council's policy. Such a decision was made by this Committee on 25 September 2017 where 4 electric Hackney Carriage vehicle types were added to the Supplementary Testers Manual despite not having London Public Carriage Office approval. However all vehicles did have M1 Whole Type Approval, meaning the vehicles had all been crash tested in their converted state.</p> <p>Members are asked to determine the application to licence the Hyundai i800 Hackney Carriage conversion for use as a Hackney Carriage Vehicle and to consider whether good reason(s) exist to depart from the Council's current policies.</p>		
Recommendation(s):		
1	To be satisfied that no good reason has been presented to cause the Committee to depart from its existing policy and specification;	
2	To refuse the application to licence the Hyundai i800 Hackney Carriage conversion,	

vehicle registration number EX18 DGV, for use as a Hackney Carriage Vehicle, for the following reasons:

- (i) it is not approved for use by the Public Carriage Office (now Transport for London) and fails to meet their requirements as indicated in Appendix 2 of the report.
- (ii) the Council cannot be satisfied that the vehicle is sufficiently safe and built to the required crash safety standards given that:-
 - a) it does not hold M1 Whole Type Vehicle Approval and, in particular, the partition has not been crash tested to determine its capability during a road traffic accident which could result in safety issues for both the driver and passengers.
 - b) the ramp for wheelchair access is set at a steep angle when attached to the vehicle and flexes when walked on meaning the safety of the passenger could be compromised during loading.
- (iii) the vehicle does not have sufficient access to load all classes of wheelchair users or to allow wheelchair users to be conveyed in comfort and safety and would not be accessible to larger manual nor mechanical wheelchairs.
- (iv) the vehicle does not have a hearing loop for those with auditory limitations
- (v) the status of the vehicle as a category N insurance insurance loss and the number of mechanical failures present at the various times that the vehicle has been presented for testing indicate that the vehicle is either not maintained in a safe condition and/or is susceptible to mechanical and safety failure

1 Reasons For Recommendations

- 1.1 The Council has adopted policies relating to the age, specification and appearance of hackney carriages designed to ensure the safety and comfort of the fare paying public and their accessibility regardless of customer ability. The vehicle in question has been assessed against these policy requirements and does not comply with them in a number of respects outlined in more detail in paragraphs 2.6 – 2.8 below.
- 1.2 The Council may however depart from its policies where there is good reason and the Committee is asked to consider the circumstances of this case and determine whether the vehicle should be granted a hackney carriage vehicle licence.
- 1.3 The vehicle has been inspected on numerous occasions and faults have been found and raised with the Proprietor (as detailed below). Whilst the Proprietor has rectified the majority of the faults found, it is officer's view that the remaining outstanding points render the vehicle unfit for use as a hackney carriage in accordance with the terms of the Council's policies. Hackney Carriage vehicles licensed by Nottingham City Council are designed to be of such appearance and design to support the safety and comfort of the travelling public. As the integrity and safety of the vehicle is in doubt, together with the concerns regarding disability support, there do not appear to be good grounds justifying a departure from existing policies at this time.

2 Background (Including Outcomes Of Consultation)

- 2.1 It is the responsibility of Nottingham City Council to issue Hackney Carriage licences under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.

2.2 Under Section 37 Town Police Clauses Act 1847 the Council may from time to time licence to ply for hire within the City hackney carriages.

2.3 Under Section 47 of the Local Government (Miscellaneous Provisions) Act 1976 a Council may require the hackney carriages it licenses to be of such design and appearance or bear such distinguishing marks as shall clearly distinguish it as a hackney carriage, providing the authority for the Council to prescribe vehicle specification requirement in policy.

2.4 In 1990 the Council first introduced its policy requiring all Hackney Carriages licensed by the City Council to be of a type approved by the London Public Carriage Office, wheelchair accessible and British Racing Green in colour. The purpose of this policy was to ensure the safety of the vehicles to be licensed and that they were accessible to passengers regardless of ability bearing in mind that a hackney carriage can be hailed and hired by anyone off the street. The requirement for London Public Carriage Office (now Transport for London) approval includes the requirement to have M1 Whole Vehicle Type Approval in place (meaning the vehicle model has been fully crash tested in its converted state and that future vehicles will be built to a consistent and safe standard). The requirements for London Public Carriage Office approval are summarised in Appendix 2. This policy withstood a challenge by way of appeal and was phased in over a number of years with all hackney carriages conforming to this requirement since 1995. The Policy was supported by the approval of a Supplementary Testers Manual detailing the design requirements, approved vehicle type, access, dimensions and layout.

2.5 The Council subsequently adopted further policies relating to the age, specification and appearance of the hackney carriages it will licence as follows:

- i) 25 September 2017 – approval of additional models of Hackney Carriage Vehicle , invoking changes to the Supplementary Testers Manual
- ii) 18 December 2017 - approval of an Age and Specification Policy relating to Hackney Carriage & Private Hire Vehicles which came into effect on 01 January 2018, also invoking changes to the Supplementary Testers Manual. This policy had been the subject of an earlier report to the same Committee on 25 September 2017 and consultation with the private hire and hackney carriage trades.
- iii) 16 March 2018 - a policy requiring Hackney Carriages to be finished in one colour of the relevant manufacturer's shade of black with a white vinyl wrap roof and the displaying the Council's coat of arms in white.

2.6 The Council's Supplementary Testers Manual lists the approved Hackney Carriages that will be licensed by Nottingham City Council from 01 January 2020. This includes some vehicles which have been separately approved as departures from the Council's 1990 Policy. The Hyundai i800 vehicle is not on this approved list albeit it is Euro 6 compliant meaning the engine and the vehicle were both manufactured after September 2015 meeting acceptable limits for exhaust emissions and complying with the latest directive set by the European Union to help reduce the level of harmful pollutants produced by new vehicles. In addition vehicle registration EX18 DGV does not hold the M1 Whole Type Approval as required by the 1990 policy meaning that the safety of the vehicle and the integrity of the build has not been crash tested. Officers cannot therefore be satisfied that it is sufficiently safe and built to the required crash safety standards. Safety concerns, in particular, exist around the partition which is a fixed structure

separating the driver and passenger, in that it has not been crash tested, to determine its capability during a road traffic accident which could result in safety issues for both the driver and passengers.

2.7 The history of this particular licensing application is as follows:-

- i) On 1 September 2018 the Proprietor, Mr Gul Nawaz purchased a Hyundai i800 vehicle registration EX18 DGV with the intention of the vehicle being licensing by Nottingham City Council as a Hackney Carriage vehicle.
- ii) On 28 November 2018, the Proprietor presented the vehicle to Taxi Licensing for a visual inspection prior to submission of any application for advice on whether the vehicle was likely to meet the Council's recommended standards. Upon inspection by Compliance Officers and subsequently a qualified MOT inspector, faults were found as detailed in Appendix 1. The findings were explained to the proprietor as to why the vehicle would be seen as unfit for use as a licensed Hackney Carriage Vehicle.
- iii) On 28 January 2019, the Proprietor resubmitted the vehicle to the Testing Centre on and whilst improvements had been made, the vehicle presented with faults as detailed in Appendix 1.
- iv) On 15 February 2019, the Proprietor resubmitted the vehicle to the Testing Centre on and whilst improvements had been made, the vehicle was again presented with faults as detailed in Appendix 1. Due to the alterations made to the lowering of the seats, concerns were raised about access and egress for those with mobility issues.
- v) On 26 February 2019, the Proprietor resubmitted the vehicle to the Testing Centre on and whilst improvements had been made, the vehicle was again presented with faults as detailed in Appendix 1.
- vi) On 27 December 2019, an application for a Hackney Carriage Vehicle Licence was submitted by Mr Gul Nawaz for vehicle registration EY18 DGV. Upon receipt of the application an HPI check was carried out by the Licensing Office which showed that the vehicle was declared a Category N insurance loss on 13 July 2018. A Category N vehicle is one which has suffered some damage, probably in an accident, but not to its structural frame or chassis. The insurance company that handled the claim decided that repairing the vehicle would have cost more than replacing it. Insurers often sell Cat N vehicles on for salvage. Many are also safely repaired and returned to the road. The vehicle was repaired and subsequently sold to Mr Nawaz who had it converted at Great Northern Cars Ltd, Great Northern road, Keighley.
- vii) On 22 January 2020, the vehicle was presented for MOT and inspection and failed with faults as detailed in Appendix 1. The vehicle at that stage did not comply with the 1990 Policy or Supplementary Testers Manual.
- viii) On 22 January 2020, the vehicle was retested following adaptations, again failing as detailed in Appendix 1. The vehicle at that stage did not comply with the 1990 Policy or Supplementary Testers Manual,
- viii) On 23 January 2020 the vehicle was again presented for inspection and found to be mechanically compliant with the current Supplementary Testing

Manual but still failed to meet the 1990 policy with respect to London Public Carriage Office approval (Appendix 2). Safety concerns were also raised by the tester regarding structural integrity of some of the work which had been carried out, namely the partition separating the driver from the passenger which has not been crash tested to determine its capability during a road traffic accident which could result in safety issues for both the driver and passengers and the steep angle for the wheelchair ramp when attached to the vehicle which also flexes when walked on meaning the safety of the passenger could be compromised during loading. The vehicle has been examined with reference to access by a wheelchair user in a smaller sized manual wheelchair. Whilst the user could access the vehicle, the ceiling to floor height is low and there is very little head room. The passengers head was touching the ceiling and the heating/air conditioning controls. There are therefore concerns about not only the comfort of wheelchair passengers using this vehicle but and the space would be even more restrictive to larger manual or mechanical wheelchairs who would not be able to access this vehicle at all. In addition there are no yellow safety strips on the floor nor retractable straps both meaning that the safety of vulnerable passengers may be affected . The yellow grab handles were painted and would deteriorate over time with repetitive usage. The vehicle is not fitted with a hearing loop meaning that persons with auditory difficulties would be at a disadvantage and would be unable to use the vehicle. In addition although the vehicle has been presented in the manufacturers colour of black, the Council's policy requirement of a vinyl white roof has not been applied until the application has been determined. This however was to save costs pending consideration of the application by Committee, saving the Proprietor unnecessary costs at this stage. If the application were to be approved, the approval should be subject to the application of such a wrap and compliance with the Council's Policy of 16 March 2018

- 2.8 Whilst the vehicle is Euro 6 compliant as required by the Age & Specifications Policy referred to above, the vehicle does not hold the required safety approval. The vehicle has been inspected on numerous occasions and, despite its young age, faults have been found and raised with the Proprietor (as detailed above and in appendix 1). Whilst the Proprietor has rectified the majority of the faults found this raises concerns regarding the safety and maintenance of the vehicle, and the remaining outstanding points, in Officer's view, render the vehicle unfit for use as a hackney carriage in accordance with the terms of the policies of Nottingham City Council. As the integrity and safety of the vehicle is in doubt, together with the concerns regarding disability support, there do not appear to be good grounds justifying a departure from existing policies at this time.

- 2.9 The vehicle is available to view by the Committee should it wish.

3 Other Options Considered In Making Recommendations

- 3.1 None

4 Finance Colleague Comments (Including Implications And Value For Money/Vat)

4.1 No financial implications to the Council

5 Legal And Procurement Colleague Comments (Including Risk Management Issues, And Legal, Crime And Disorder Act And Procurement Implications)

5.1 Section 37 of the Town Police Clauses Act 1847 (TPCA 1847) empowers a district council to grant licences in its area for Hackney Carriages. The licence relates to the vehicle and not to its owner.

5.2 Section 47 of the Local Government (Miscellaneous Provisions) Act 1976 allows a Council to require Hackney Carriages licensed by it to be of such design or appearance or to bear distinguishing marks as it requires to enable them to be clearly distinguished as hackney carriages. In addition the Council is entitled to have a policy or policies relating to classes of application. The Council can therefore lawfully have policies and prescribe a vehicle specification of the type approved.

5.2 As indicated in the body of the report, the Council's current specification was originally prescribed in 1990. Whilst the Council is entitled to have a policy as to the type of vehicles it will licence it may depart from that policy where there are good reasons to do so. Case law has held that "A public authority cannot lawfully fetter itself so as to follow blindly an adopted policy. It must maintain at least the possibility of departure from an adopted policy in an appropriate case and it must keep an open mind as to whether it should depart from the accepted policy in any given case". The Council has followed this approach previously where vehicles have met the aims of the Council's current specification (ie were wheelchair accessible, safe, met the needs of the travelling public, etc) but lacked London Public Carriage Office approval. It is therefore within the Committees power to determine the application and whether good reason exists to depart from its policies in the specific circumstances of this case.

5.3 Section 7 of the Public Health Acts Amendment Act 1907 provides that an appeal against a local authority's refusal to grant such a licence may be made at the Crown Court. Under the Crown Court rules 1982 notice of appeal must be given no less than 21 days after the decision appealed against is given. Such an appeal is by way of rehearing of the application.

6 Strategic Assets & Property Colleague Comments (For Decision Relating To All Property Assets And Associated Infrastructure) (Area Committee Reports Only)

6.1 N/A

7 Equality Impact Assessment

7.1 An EIA is not required because the Supplementary Testing Manual and the policies relating to standards to which vehicles are tested have previously been approved by this Committee.

8 List Of Background Papers Other Than Published Works Or Those Disclosing Confidential Or Exempt Information

8.1 None

9 Published Documents Referred To In Compiling This Report

9.1 Town Police Clauses Act 1847

9.2 Local Government (Miscellaneous Provisions) Act 1976