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Exemption applied: None

Review date for release N/A

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## Determination of an application to licence a private hire vehicle which does not comply with the Council's vehicle age policy

### Report summary:

It is the District Council's policy that on initial licensing as a private hire, a vehicle shall not be more than 5 years old from the date of first registration as shown on the vehicle registration document. An application has been received to licence a private hire vehicle, vehicle registration number KN17 MXE, which is 5 years and 10 months of age. This application is to be determined by the Licensing and Enforcement Sub Committee.

### Is the proposed decision in accordance with:

Budget Yes  No

Policy Framework Yes  No

### Recommendation

That the Licensing and Enforcement Sub Committee consider the application to licence a grey Mercedes-Benz E220 vehicle registration number KN17 MXE as a private hire vehicle and determine whether to refuse the application or make an exception to the District Council's vehicle age policy and agree to grant the application and licence the vehicle.

### Reason for recommendation:

To ensure that vehicles licensed with this authority meet a high standard of passenger safety and comfort and are fit to carry out the work that is required as a private hire vehicle.

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### Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

**Equalities impact** Low Impact

**Climate change** Low Impact

**Risk:** Low Risk

**Links to background information:**

[Town Police Clauses Act 1847](#)

[Local Government \(Miscellaneous Provisions\) Act 1976](#)

[East Devon District Council's Statement of Licensing Policy for Hackney Carriages, Private Hire Vehicles, Drivers and Private Hire Operators](#)

**Link to [Council Plan](#)**

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

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**Report in full**

## **Legislation and Policy**

1.1 The Council is responsible for the regulation of hackney carriage and private hire services within the district. The legal framework for the taxi licensing regime is contained in numerous pieces of legislation but primarily the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.

1.2 **Section 48 Local Government (Miscellaneous Provisions) Act 1976 states that:**

48 Licensing of private hire vehicles

- (1) 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;

- (b) that there is in force in relation to the use of the vehicle a policy of insurance or such security as complies with the requirements of [Part VI of the Road Traffic Act 1988],

and shall not refuse such a licence for the purpose of limiting the number of vehicles in respect of which such licences are granted by the council.

- (2) A district council 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.

1.3 East Devon District Council's responsibility for the regulation of hackney carriage and private hire licences is exercised in accordance with the District Council's Statement of Licensing Policy for Hackney Carriages, Private Hire Vehicles, Drivers and Private Hire Operators (henceforth referred to as the Hackney Carriage and Private Hire Licensing Policy) which, following a public consultation, was approved by the Licensing and Enforcement Committee on 17<sup>th</sup> May 2017 and adopted by Full Council on the 27<sup>th</sup> July 2017.

1.4 A Hackney Carriage and Private Hire Licensing Policy is not a statutory policy and although there is no requirement for the Council to adopt such a policy, it is good practice to do so as it sets out the Council's approach to issuing licences and enforcement ensuring a consistency of approach and fairness and transparency for both the trade and public alike. The policy is kept under constant review.

1.5 At the time of adoption in July 2017 the provisions of that policy in respect to vehicle age, stated that:

*"The Council's policy is that on initial licensing as a hackney carriage or private hire vehicle a vehicle shall be no more than 4 years old from the date of first registration as shown on the vehicle registration document".*

1.6 In April 2020 East Devon District Council temporarily adopted an Emergency Covid 19 Policy in relation to hackney carriage and private hire licensing. At this time the maximum age for vehicles on initial licensed was temporarily to no more than 5 years old from date of first registration in order to assist the taxi trade during challenging times. The Emergency Covid 19 Policy came to an end on the 31<sup>st</sup> December 2021.

1.7 Following a request from hackney carriage vehicle licence holders, it was subsequently resolved at a meeting of the Licensing and Enforcement Committee on the 26<sup>th</sup> October 2022, to re-instate the temporary extension to the vehicle age policy until the Council's Hackney Carriage and Private Hire Licensing Policy is fully reviewed in 2023. This amendment to the Hackney Carriage and Private Hire Licensing Policy was ratified by Full Council on the 7<sup>th</sup> December 2022.

1.8 Section 11.5 of the Hackney Carriage and Private Hire Licensing Policy, adopted on the 27<sup>th</sup> July 2017 and last updated on the 7<sup>th</sup> December 2022, sets out the Council's vehicle age policy and section 11.5.1 states that:

*"The Council's policy is that on initial licensing as a hackney carriage or private hire vehicle a vehicle shall be no more than 5 years old from the date of first registration as shown on the vehicle registration document".*

1.9 Section 11.5.2 of the policy states:

*“Where exceptional circumstances may apply applications to licence vehicles that are more than 5 years old from the date of first registration as shown in the vehicle registration document will be considered by the District Council on a case by case basis. The presumption is that licences will not be granted for vehicles over 5 years old, but each such application will be considered on its own merits. Factors such as the condition of the vehicle and the mileage will be relevant. The application will be considered by a Sub Committee of the Licensing and Enforcement Committee. The Sub Committee will need to be satisfied that the vehicle is in exceptional condition for its age. The Council would expect the vehicle to have a full service history and a certification that the recorded mileage is correct. When considering to licence an older vehicle Members will expect to be provided with an AA ‘Comprehensive’ test report or a RAC ‘Essential Plus’ report to indicate the condition of the vehicle. These reports must be provided at the applicant’s own expense. Providing these documents does not mean that the vehicle licence will be automatically issued, but is a starting point at which the Council can make a decision to licence the vehicle or not, based on the vehicle condition. All the other relevant documents necessary for licensing must also be produced. This provision shall not apply to non-motorised vehicles”.*

1.10 Licensing Officers therefore have delegated powers to grant licences for new hackney carriage and private hire vehicles up to the age of 5 years from date of first registration only.

1.11 Where exceptional circumstances apply, applications to licence a vehicle over 5 years old (from date of first registration) may be referred to a Sub Committee of the Licensing & Enforcement Committee for determination. This is in line with section 11.5.1 and 11.5.2 of the Council’s Hackney Carriage and Private Hire Licensing Policy.

### **Application details**

1.12 On the 9<sup>th</sup> December 2022, an application to licence a private hire vehicle was received in full by the Licensing Authority from Mr Barry Gardner of Bay Travel.

1.13 In support of this application the following documentation has been produced:

Appendix A – application for private hire vehicle licence

Appendix B – V5 vehicle registration document details

Appendix C – confirmation of MOT

Appendix D – vehicle compliance test

Appendix E – confirmation of Tax

Appendix F – insurance certificate

Appendix G – photographs of the vehicle

Appendix H – vehicle service report

Appendix I – BCA report

1.14 The application form is set out at **APPENDIX A**. The applicant has asked to transfer this new vehicle onto their existing vehicle licence plate PV0015 in order to replace a previously licensed vehicle which has been sold. The transfer application process currently allows a licence holder to change the vehicle licensed - to another vehicle owned by themselves which meets the licensing requirements - during the lifetime of the 1 year vehicle licence. The

procedure for a vehicle transfer application is identical to the procedure to grant a new vehicle licence and the same checks are completed and the same standards applied.

- 1.15 Vehicle licence PV0015 expires on the 27<sup>th</sup> April 2023 and were the Sub Committee minded to grant this application, the vehicle licence would be granted up until that date.
- 1.16 The vehicle is described in the V5 vehicle registration document, details set out at **APPENDIX B**, as a grey Mercedes-Benz model E220 D SE AUTO registration number KN17 MXE. The body type is described as a 4 door saloon with an engine cylinder capacity of 1950cc and CO2 emissions of 105 G/KM.

The date of first registration is shown in the registration document as the **9<sup>th</sup> March 2017**. The vehicle is now **5 years and 10 months** old.

- 1.17 The Council's Hackney Carriage and Private Hire Licensing Policy requires all private hire vehicles over 36 months of age to have a valid Ministry of Transport test certificate (MOT). The applicant has provided a current MOT certificate for the vehicle and an online check of the vehicle's MOT status has also been completed. The MOT details are displayed at **APPENDIX C**. The MOT was carried out on the 6<sup>th</sup> December 2022 by an authorised MOT garage and does not list any advisories or defects. This MOT expires on the 5<sup>th</sup> December 2023.
- 1.18 In addition to the MOT certificate, the Council requires that all hackney carriages and private hire vehicles must hold a current compliance test report/certificate to the standard set by the Council. The applicant has provided a compliance test report which is set out at **APPENDIX D** and has been completed by a garage authorised to issue MOT certificates.
- 1.19 The MOT indicates that on the date of the MOT (6<sup>th</sup> December 2022) the vehicle's mileage was shown as: 48,039 miles. The vehicle mileage may have increased since that date and the Sub Committee may wish to ask the applicant for a current reading.
- 1.20 An online tax check has been carried out and is presented at **APPENDIX E**. This demonstrates that the vehicle is currently taxed with the tax next due on the 1<sup>st</sup> December 2023.
- 1.21 The applicant has provided a certificate of motor insurance for KN17 MXE which is set out at **APPENDIX F** and is valid from the 3<sup>rd</sup> December 2022 to the 14<sup>th</sup> April 2023. This states that the vehicle is insured for "use for the business of the policyholder as a private hire operative including the carriage of passengers for hire and reward and in accordance with the requirements of the declared licensing authority including use for social, domestic and pleasure".
- 1.22 The applicant has provided photographs of the vehicle in line with the Council's current procedures and these are set out at **APPENDIX G**. The vehicle will be presented by the applicant at the Council Offices on the day of the hearing to allow Members the opportunity to inspect the vehicle.
- 1.23 As demonstrated in the photographs the seating configuration of the vehicle is: driver's seat and one passenger seat in the front with three forward facing seats in the rear compartment.
- 1.24 If Members see fit to licence the vehicle, the applicant has requested in the application that the vehicle is licensed for 4 passengers.

- 1.25 The applicant has indicated in the application form that, to their knowledge, the vehicle has not been declared a write off or potential write off by the police or an insurance company at any time.
- 1.26 An online basic vehicle check carried out by Licensing Officers on the 6<sup>th</sup> January 2023 also indicates that the vehicle is not an insurance write off, is not recorded as stolen or scrapped and is not imported or exported.
- 1.27 Although it is not a current requirement of the Council's Hackney Carriage and Private Hire Licensing Policy, the applicant has provided a digital service report in support of the application and this can be viewed at **APPENDIX H**. This sets out the vehicle's service history and contains service reports from the 29<sup>th</sup> August 2018 and the 3<sup>rd</sup> May 2022.
- 1.28 The applicant has also provided a British Car Auctions (BCA) vehicle appraisal report in support of their application and this can be viewed at **APPENDIX I**. BCA describe this report as a 30+ point mechanical assessment undertaken by trained inspectors at their network of remarketing centres across the UK. The report as described as giving a snapshot of a vehicle's mechanical condition at the point in time when the assessment took place and is not intended as a substitute for a full mechanical inspection or MOT test and is not a warranty or insurance on the vehicle. The appraisal was carried out on the 28<sup>th</sup> and 29<sup>th</sup> November 2022 and the vehicle has been given a BCR grading of 1. This is their highest level of grading and means that "the vehicle may have minor interior and exterior defects that require SMART repairs, i.e. minor scratches or dents and minor replacement parts could also be required".

Page 1 of the BCA vehicle appraisal report lists some minor scratches and chips to the exterior of the vehicle. Page 2 of the vehicle appraisal report lists the checks that have been carried out. These have all been recorded in green as "OK". "OK" is defined by the BCA (in relation to this report) as meaning that; *"these items, whilst not necessarily in "as new" or retail condition, are considered to be in a serviceable state or condition, or indicative of such a state or condition"*.

- 1.29 Section 11.5.2 of the Council's Hackney Carriage and Private Hire Licensing Policy (set out at number 1.9 of this report) states that when considering to licence an older vehicle Members will expect to be provided with an AA Comprehensive test report or a RAC Essential Plus report to indicate the condition of the vehicle.

The applicant has not provided an AA or RAC report in support of the application and has stated that they do not consider the additional expense necessary having already provided the vehicle service history and a BCA report.

### **The applicant**

- 1.30 Mr Barry Gardner is a licensed private hire driver and operator with this authority and has held the private hire driver and operator licences since January 2016 and March 2016 respectively.
- 1.31 Mr Gardner operates from a base in East Devon.
- 1.32 Mr Gardner has two other vehicles currently licensed with this authority being:
- a. a Ford Tourneo which is approximately 4 years old and licensed to carry 8 passengers and,

- b. a Nissan Qashqai which is approximately 4 years and 6 months old and is licensed to carry 4 passengers

1.33 The Sub Committee may wish to note that the applicant has applied on one previous occasion to licence a private hire vehicle which does not comply with the Council’s vehicle age policy and this application was determined by a Sub Committee of the Licensing and Enforcement Committee on the 29<sup>th</sup> March 2017.

1.34 That application was to licence a Mercedes-Benz which was 5 years and 6 months old from date of first registration and did not comply with the Council’s vehicle age policy, which at that time was that a vehicle shall not be more than 4 years old from date of first registration on initial licensing. That application was granted by the Sub Committee. This vehicle is no longer licensed as a private hire vehicle.

## 2 Background Information

2.1 There are 36 private hire vehicles currently licensed by East Devon District Council. These vehicles range in age (from date of first registration) from 5 months old to 9.5 years old as follows:

Age range	Number of vehicles licensed in this age bracket
Under 1 year	1
Between 1 and 2 years	2
Between 2 and 3 years	1
Between 3 and 4 years	6
Between 4 and 5 years	4
Between 5 and 6 years	9
Between 6 and 7 years	8
Between 7 and 8 years	1
Between 8 and 9 years	3
Between 9 and 10 years	1

2.2 East Devon District Council’s Hackney Carriage and Private Hire Licensing Policy does not exclude a vehicle from being licensed as a hackney carriage or private hire by reason of being more than 5 years old if the vehicle was initially licensed by the Council and is continually licensed thereafter as either a hackney carriage or private hire vehicle. This is stated at section 11.5.1 of the policy.

It does however prescribe additional checks for older vehicles that continue to be licensed and includes the following provisions:

2.2.1 Section 11.5.1 of the policy states that:

*“Licensed vehicles of more than 8 years old shall only continue to be licensed subject to a satisfactory East Devon vehicle compliance report being obtained every 6 months from the date of licence issue. The test must be carried out by an authorised MOT examiner at a testing station approved by the Ministry of Transport, and must be conducted against an inspection checklist”.*

2.2.2 Section 11.5.2 of the policy states that:

*“Licensed vehicles over 14 years of age must be presented for inspection by a Licensing Officer prior to further renewal of the vehicle licence. In circumstances where a vehicle is*

*not considered by an Officer to be of sufficient standard then the application will be referred to the Sub Committee of the Licensing and Enforcement Committee who will decide whether to grant the renewal of the vehicle licence. If an appointment for an inspection is not made prior to the vehicle licence renewal date, the licence will automatically expire”.*

### **3 Conclusion**

- 3.1 This vehicle was registered on the **9<sup>th</sup> March 2017** and is now **5 years and 10 months** old.
- 3.2 The applicant has provided an MOT certificate, vehicle inspection report, BCA report and vehicle service history in support of the application. However, if Members feel that either an AA ‘Comprehensive’ test report or a RAC ‘Essential Plus’ report on the vehicle is required before they are able to make a decision, the Sub Committee has an option to adjourn the hearing to enable the applicant to provide one of these reports.
- 3.3 As set out in paragraphs 1.3 – 1.11 of this report, the Council’s Hackney Carriage and Private Hire Licensing Policy requires that on initial licensing as a private hire vehicle a vehicle shall not be more than **5 years** old from the date of first registration as shown in the registration document.
- 3.4 This is a policy agreed by Members following, as in all cases of policy, consultation with the trade and other interested parties. Policy is more than advice and should not be disregarded unless exceptional circumstances apply.
- 3.5 The policy states that:
- “Where exceptional circumstances may apply applications to licence vehicles that are more than 5 years old from the date of first registration as shown in the vehicle registration document will be considered by the District Council on a case by case basis. The presumption is that licences will not be granted for vehicles over 5 years old, but each such application will be considered on its own merits”.*
- 3.6 It also states that:
- “The Sub Committee will need to be satisfied that the vehicle is in exceptional condition for its age”.*
- 3.7 Members should note that the presumption is that on initial licensing, licences will not be granted for vehicles over 5 years old but that each such application should be considered on its own merits.
- 3.8 It should also be noted that, if Members are minded to grant the application, they must be satisfied that the vehicle is in exceptional condition for its age and that exceptional circumstances apply. Factors that Members should consider include the condition of the vehicle when presented and the information included within both the report and the documentation listed in the appendices. Members will have the opportunity to hear from the applicant and inspect the vehicle.
- 3.9 If Members are unable to find grounds to make an exception the application should be refused.
- 3.10 When departing from policy Members should state clearly in their decision the grounds for making the exception.



- 3.11 Members must not refuse the application purely for the purpose of limiting the number of private hire vehicle licences granted by East Devon District Council.
  - 3.12 Members may attach to the grant of a private hire vehicle licence such conditions as they may consider reasonably necessary in line with the provisions of Section 48 Local Government (Miscellaneous Provisions) Act 1976.
  - 3.13 If this application is refused the applicant has the right of appeal the decision to a Magistrates Court within 21 days.
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**Financial implications:**

There are no financial implications in this report. If the applicant appeals against the decision made there may be a possibility of court costs.

**Legal implications:**

The legal implications are contained within the report.