

Report to: Licensing and Enforcement Sub Committee



Date of Meeting 26<sup>th</sup> June 2024

Document classification: Part A Public Document

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:**

An application has been received to licence a Ford B-Max, vehicle registration number HY67 KVJ as a private hire vehicle. The vehicle is approximately 6 years and 8 months old and has not previously been licensed by the Council. 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 and the application is therefore referred to the Licensing and Enforcement Sub Committee for determination.

### **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 vehicle registration number HY67 KVJ as a private hire vehicle and determine whether to refuse the application in line with policy requirements 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
- Communications and Democracy
- Economy
- Finance and Assets
- Strategic Planning
- Sustainable Homes and Communities
- Culture, Leisure, Sport and Tourism

**Equalities impact** Low Impact

**Climate change** Low Impact

**Risk:** Low Risk

### **Links to background information**

[Town Police Clauses Act 1847 \(legislation.gov.uk\)](#)

[Local Government \(Miscellaneous Provisions\) Act 1976 \(legislation.gov.uk\)](#)

[Taxi Policy and Guidance - Hackney carriage and private hire licensing policy - East Devon](#)

### **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**

The Licensing & Enforcement Sub Committee is asked to determine an application for the grant of a private hire vehicle licence, for a vehicle which does not meet the vehicle age criteria set out in East Devon District Council's Hackney Carriage & Private Hire Licensing Policy.

#### **1. Application details**

- 1.1. On the 9<sup>th</sup> May 2024, an application to licence a private hire vehicle was received by the Licensing Authority from Mr Justin Maxwell-Batten who is an East Devon licensed private hire operator.
- 1.2. Various documentation was provided in support of the private hire vehicle licence application and has been included within the appendices of this report as follows:

**APPENDIX A** – Application for the grant of a private hire vehicle licence

**APPENDIX B** –V5 vehicle registration certificate vehicle details

**APPENDIX C** – MOT history record

**APPENDIX D** – Vehicle inspection report form

**APPENDIX E** – Vehicle tax confirmation

**APPENDIX F** – Photographs of the vehicle

**APPENDIX G** – Service schedule for service carried out on 8<sup>th</sup> May 2024

**APPENDIX H** – Service history invoice records

**APPENDIX I** – RAC Inspection Report form

- 1.3. A copy of the private hire vehicle licence application form, submitted by the applicant on the 9<sup>th</sup> May 2024, is set out at **APPENDIX A** of this report and outlines their application to licence a 4-passenger, blue, Ford B-Max, MPV, vehicle registration number HY67 KVJ as a private hire vehicle.

- 1.4. The vehicle has not previously been licensed by East Devon District Council as either a private hire or hackney carriage vehicle and this is an application for the initial, first grant of a private hire vehicle licence.
- 1.5. The Licensing Authority has been provided with a copy of the V5 vehicle registration document for HY67 KVJ which confirms the vehicle is registered to the applicant. The relevant vehicle details listed in the V5 have been reproduced at **APPENDIX B** of this report and include the vehicle's cylinder capacity, fuel type and exhaust emissions.
- 1.6. The V5 gives the vehicle's date of first registration as the **28<sup>th</sup> October 2017**, which will make the vehicle approximately **6 years and 8 months** of age on the date of the hearing. On initial receipt of the application by the Licensing Authority, the vehicle was approximately 6 years and 6 months old.
- 1.7. 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 history has been completed with the results displayed at **APPENDIX C** of this report. The most recent MOT was carried out on the 8<sup>th</sup> May 2024 by an authorised MOT garage and is valid until the 7<sup>th</sup> May 2025. The vehicle passed the MOT with one advisory item - *front brake pad(s) wearing thin* - listed as being to monitor and repair if necessary.
- 1.8. The applicant has confirmed that the advisory item has been rectified and that the front brake discs and pads were replaced by the MOT garage following the MOT test. The applicant has provided the Licensing Authority with a copy of the garage's MOT invoice dated 8<sup>th</sup> May 2024 to demonstrate this and the invoice includes an itemised charge for "1 set of brake pads" and "1 pair of brake discs".
- 1.9. The MOT indicates that, on the 8<sup>th</sup> May 2024, the vehicle's recorded mileage was: 19,059 miles. The vehicle mileage may have increased since that date and the Sub Committee may wish to ask the applicant for a current reading at the hearing.
- 1.10. In addition to an MOT test, East Devon District Council's Hackney Carriage & Private Hire Vehicle Licensing Policy requires all hackney carriages and private hire vehicles to hold a current compliance inspection report to the standard set by the Council. The applicant has provided a compliance inspection report, completed by an MOT registered garage, which confirms that the vehicle has passed all testable items and was found to be safe, comfortable and in sound mechanical condition. A copy of the vehicle inspection report is included at **APPENDIX D** of this report.
- 1.11. The applicant has also provided a certificate of motor insurance for HY67 KVJ which is valid from the 29<sup>th</sup> April 2024 to the 30<sup>th</sup> January 2025 and names the applicant as the only person entitled to drive the vehicle. This states that the vehicle is insured for "use for private hire, including the carriage of passengers and goods for hire or reward" as well as "use for social, domestic and pleasure purposes".

- 1.12. An online tax check has been carried out, and is presented at **APPENDIX E**, and demonstrates that the vehicle is taxed until the 31<sup>st</sup> March 2025.
- 1.13. The applicant has provided photographs of the vehicle in line with the Council's current procedures, and these are set out at **APPENDIX F**. The vehicle will be presented to Sub Committee Members at the Council Offices on the day of the hearing to allow Members the opportunity to inspect the vehicle.
- 1.14. 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. If Members see fit to licence the vehicle, the applicant has requested that the vehicle is licensed for 4 passengers in line with the vehicle's seating capacity.
- 1.15. The applicant has not indicated in the application form whether, to their knowledge, the vehicle has been declared a write off or potential write off by the police or an insurance company at any time. However, a basic online vehicle check was carried out by Licensing Officers on the 13<sup>th</sup> June 2024 which indicated that the vehicle is not an insurance write off, is not recorded as stolen or scrapped and is not imported or exported.
- 1.16. Section 11.5 of the Council's Hackney Carriage & Private Hire Licensing Policy states that, when considering applications to licence vehicles over the age of 5 years old, "*the Council would expect the vehicle to have a full service history and a certification that the recorded mileage is correct*". In support of this, the applicant has provided:
  - 1.16.1. A copy of the service schedule from the most recent service "84 month" service carried out on the 8<sup>th</sup> May 2024. A copy is attached at **APPENDIX G** of this report.
  - 1.16.2. Copy invoices for services carried out between 2018 to 2022. Copies are attached at **APPENDIX H** of this report.
- 1.17. Section 11.5.2 of the Council's Hackney Carriage and Private Hire Licensing Policy also states that when considering an application to licence an older vehicle, Licensing Sub Committee 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. 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.
- 1.18. To satisfy this requirement, the vehicle proprietor arranged for an RAC Inspection of vehicle registration HY67 KVJ to be carried out on the 28<sup>th</sup> May 2024 and has provided the Licensing Authority with a copy of the RAC Vehicle Inspection Report. This can be found at **APPENDIX I** of this report.

1.19. The Inspection Summary section of the RAC report gives an overview of the areas checked by the engineer and all areas have been marked as “*satisfactory for recorded age and mileage*”. In the Engineer Summary, the RAC stated that:

*“The engineer carried out a full check of the vehicle, and found the vehicle in a satisfactory condition for use as a taxi. A road test completed by the engineer after the inspection found the vehicle to be driving at a satisfactory standard and was deemed safe for general/taxi road purposes”.*

## 2. **The applicant**

- 2.1. Mr Justin Maxwell-Batten has held a private hire driver licence and private hire operator licence with East Devon District Council since the 14<sup>th</sup> October 2015 and operates from a base within East Devon.
- 2.2. Mr Maxwell-Batten has one other vehicle currently licensed as a private hire vehicle by East Devon District Council, being a 4-passenger, Ford B-Max registration number WD66 OMT. The vehicle is 7 years and 5 months old and was first granted a private hire vehicle licence by this Authority on the 15<sup>th</sup> February 2022.

## 3. **Background Information**

- 3.1. There are 39 private hire vehicles currently licensed by East Devon District Council. These vehicles range in age from between 8 months old up to 10 years and 11 months old as follows:

<b>Age range</b>	<b>Number of private hire vehicles licensed by East Devon District Council in this age bracket</b>
Under 1 year	2
Between 1 and 2 years	0
Between 2 and 3 years	2
Between 3 and 4 years	1
Between 4 and 5 years	6
Between 5 and 6 years	10
Between 6 and 7 years	6
Between 7 and 8 years	6
Between 8 and 9 years	4
Between 9 and 10 years	0
Between 10 and 11 years	2

- 3.2. East Devon District Council’s Hackney Carriage and Private Hire Licensing Policy does not exclude an existing licensed vehicle from being licensed as a private hire by reason of being more than 5 years old provided that the vehicle was initially licensed by the Council and is continually licensed thereafter, as either a hackney carriage or private hire vehicle.
- 3.3. It does however prescribe additional checks for older vehicles that continue to be licensed and includes the following provisions:

3.4. 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”.*

3.5. 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”.*

#### 4. **Legislation and Policy**

##### **Legislation**

4.1. The Council is responsible for the regulation of hackney carriage and private hire drivers, vehicles and operators 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.

4.2. Section 48 of the Local Government (Miscellaneous Provisions) Act 1976 deals with the licensing of private hire vehicles and 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.

### **Policy Considerations**

- 4.3. 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 (referred to throughout this report 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, adopted by Full Council on the 26<sup>th</sup> July 2017 and came into force on the 27<sup>th</sup> July 2017.
- 4.4. 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.
- 4.5. The policy is kept under constant review and was last updated on the 1<sup>st</sup> November 2023 to bring it fully in line with the Department for Transport's Statutory Taxi and Private Hire Vehicle Standards which were issued to Licensing Authorities by the Government in July 2020 (and most recently updated on the 25<sup>th</sup> November 2022) to give statutory guidance on exercising taxi and private hire vehicle licensing functions in order to protect children and vulnerable adults from harm when using these services.
- 4.6. East Devon District Council's updated Hackney Carriage & Private Hire Licensing Policy came into force on the 1<sup>st</sup> November 2023 after consultation with the Licensing & Enforcement Committee and following approval by Full Council on the 18<sup>th</sup> October 2023.
- 4.7. Member's attention is drawn to section 11.5 of the Hackney Carriage & Private Hire Licensing Policy which states:
- "11.5.1 The Council's policy is that on initial licensing as a hackney carriage or private hire vehicle a vehicle shall be not more than five years old from the date of first registration as shown on the vehicle registration document. Licensed vehicles of more than eight years old shall only continue to be licensed subject to a satisfactory East Devon vehicle compliance report being obtained every six months from the date of licence issue. The test must be carried out*

*by an authorised M.O.T examiner at a testing station approved by the Ministry of Transport, and must be conducted against an inspection checklist. This is in addition to an M.O.T, which for hackney carriages is required at 1 year-old and thereafter. This policy shall 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 continually licensed thereafter as either a hackney carriage or private hire vehicle and the change merely being the transfer of the type of licence.”*

*“11.5.2 Where exceptional circumstances may apply applications to licence vehicles that are more than five 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.”*

## **5. Conclusion**

- 5.1. An application has been received to licence a blue Ford B-Max, vehicle registration number HY67 KVJ as a private hire vehicle. The vehicle’s date of first registration is shown on the vehicle registration document as the **28<sup>th</sup> March 2017** and, on the date of the Sub Committee hearing, the vehicle will be approximately **6 years and 8 months** old.
- 5.2. The vehicle is taxed, insured, has a valid MOT pass certificate, and vehicle compliance inspection report which are the mandatory requirements for all vehicles subject of an application for a private hire vehicle licence with East Devon District Council.
- 5.3. In addition to the mandatory requirements, the applicant has provided an RAC vehicle test report and vehicle service history in support of the application.
- 5.4. In relation to decision making, section 5.4 of the Department for Transport’s Statutory Taxi & Private Hire Vehicle Standards states that:



*“public safety is the paramount consideration but the discharge of licensing functions must be undertaken in accordance with the following general principles:*

- Policies should be used as internal guidance, and should be supported by a member/officer code of conduct*
- Any implications of the Human Rights Act should be considered*
- The rules of natural justice should be observed*
- Decisions must be reasonable and proportionate*
- Where a hearing is required it should be fairly conducted and allow for appropriate consideration of all relevant factors*
- Decision makers must avoid bias (or even the appearance of bias) and predetermination Data protection legislation*

5.5. East Devon District Council’s Hackney Carriage and Private Hire Licensing Policy specifies that, on initial licensing as a private hire, a vehicle shall not be more than **5 years** old from the date of first registration.

5.6. 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.

5.7. Section 11.5.1 of the Hackney Carriage & Private Hire Licensing 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.*

5.8. The applicant has informed the Licensing Authority that they consider there to be exceptional circumstances to merit the application being referred to the Licensing & Enforcement Sub Committee and have stated the reasons for this as follows:

*“I should like to bring the vehicle to a hearing as it has a very low mileage and is in very good condition. Very easy access for elderly at the rear, as you can see no pillars obstructing entrance. This is a good car in sound mechanical order”.*

5.9. The Sub Committee are therefore asked to consider the application and determine the private hire vehicle licence application.

5.10. Members are asked to note that, whilst each application must be considered on its own merits, the presumption of the Council’s Hackney Carriage & Private Hire Licensing Policy is that licences will not be granted for vehicles over 5 years old.

5.11. It should also be noted that, if Members are minded to grant the application, the Council’s Hackney Carriage & Private Hire Licensing Policy requires members to be satisfied that the vehicle is in exceptional condition for its age and that exceptional circumstances apply.

- 5.12. Factors that Members should consider when determining the application 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.
  - 5.13. If Members are unable to find grounds to make an exception the application should be refused.
  - 5.14. When departing from policy Members should state clearly in their decision the grounds for making the exception.
  - 5.15. 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.
  - 5.16. 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.
  - 5.17. 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 framework is set out within the report and requires no further comment.