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Bridgend County Borough Council



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*Rydym yn croesawu gohebiaeth yn Gymraeg.
Rhowch wybod i ni os mai Cymraeg yw eich
dewis iaith.*

*We welcome correspondence in Welsh. Please
let us know if your language choice is Welsh.*



**Gwasanaethau Gweithredol a Phartneriaethol /
Operational and Partnership Services**

Deialu uniongyrchol / Direct line /: 01656 643148
Gofynnwch am / Ask for: Mark Anthony Galvin

Ein cyf / Our ref:
Eich cyf / Your ref:

Dyddiad/Date: Friday 20 January 2017

Dear Councillor,

LICENSING COMMITTEE

A meeting of the Licensing Committee will be held in Committee Rooms 2/3, Civic Offices, Angel Street, Bridgend CF31 4WB on **Friday, 27 January 2017 at 10.00 am.**

AGENDA

1. Apologies for Absence
To receive apologies for absence from Members.
2. Declarations of Interest
To receive declarations of personal and prejudicial interest (if any) from Members/Officers in accordance with the provisions of the Members Code of Conduct adopted by Council from 1 September 2008.
3. Approval of Minutes
To receive for approval the minutes of the Licensing Committee dated 25 October 2016
4. Licence Fees: European Court of Justice Ruling - Hemming v Westminster 3 - 6
5. Application for Ford Journey Plus to be approved as a Vehicle suitable for use as Hackney Carriage in Bridgend 7 - 14
6. Urgent Items
To consider any other item(s) of business in respect of which notice has been given in accordance with Rule 4 of the Council Procedure Rules and which the person presiding at the meeting is of the opinion should by reason of special circumstances be transacted at the meeting as a matter of urgency.

Yours faithfully

P A Jolley

Corporate Director Operational and Partnership Services

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Councillors:

GW Davies MBE
PA Davies
E Dodd
CJ James
P James

Councillors

PN John
DRW Lewis
JE Lewis
DG Owen
E Venables

Councillors

R Williams
RM James
M Jones
MEJ Nott OBE

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO LICENSING COMMITTEE

27 JANUARY 2017

REPORT OF THE CORPORATE DIRECTOR OPERATIONAL AND PARTNERSHIP SERVICES

LICENCE FEES: EUROPEAN COURT OF JUSTICE RULING – HEMMING V WESTMINSTER

1. Purpose of Report

- 1.1 The purpose of this report is to advise Members of the recent European Court of Justice ruling in the Hemming v Westminster Case. The ruling has implications for the way in which local authorities can charge for the cost of administering and enforcing certain licensing regimes.

2. Connection to Corporate Improvement Objectives/Other Corporate Priorities

- 2.1 The duties of the Council as a licensing authority are statutory in nature but many of the licensing objectives support the principal aims of the Corporate Improvement Plan and the Council's corporate priorities.

3. Background.

Summary of Hemming v Westminster City Council

- 3.1 The European Services Directive aims to make it easier for service providers to operate across Europe. One of its key provisions is that licence fees can only be used to cover the costs associated with the administration of licensing regimes covered by the Directive. Local Authorities therefore cannot make a profit from licensing or deter service providers by levying unreasonable fees. The Directive is enacted in the UK by the Provision of Services Regulations 2009, and Regulation 18(4) provides that charges under an authorisation scheme must be reasonable and proportionate to, and not exceed, the cost of the procedures and formalities under the scheme. The Services Directive **does not** currently apply to taxi related fees (drivers, operators and vehicles), or fees and charges under the Gambling Act 2005 and Licensing Act 2003.
- 3.2 In 2012, sex shop owner Timothy Hemming instituted legal proceedings against Westminster City Council contesting that the level of licence fees charged by Westminster City Council were not reasonable. Westminster's sex shop fees were in excess of £26,000; the fees included costs for the management of the regime and enforcement activities against unlicensed operators; it was this latter aspect of the fee that Hemming asserted not to be 'reasonable and proportionate' under the legislation. The case has progressed subsequently through the upper Courts and the findings of each Court are summarised below.

Administrative Court (May 2012) & Court of Appeal (2013)

3.3 The Administrative Court (and subsequently the Court of Appeal) ruled that licence fees must not exceed the cost of administering the licensing process and that this could not include the costs of enforcement against unlicensed operators. However the judgement did make it clear that the costs of compliance and enforcement against licensed operators could be included in the licence fee.

3.4 **Supreme Court (April 2015)**

Westminster Council appealed the decision of the Court of Appeal and, in April 2015, the Supreme Court overturned the Court of Appeal's decision and made it clear that local authorities could set their fees at a level that would enable them to recover the full costs of managing and enforcing the licensing regime, including the costs incurred in proceedings taken against unlicensed operators.

3.5 The Supreme Court also gave consideration to how such fees should be structured. It identified two different approaches to charging licence fees:

- Type A - An application fee is charged to cover the authorisation procedures involved in the processing of the application, then successful applicants are charged an additional fee that covers the running costs and enforcement of the licensing regime.
- Type B – The applicant is charged one fee upfront that covers all costs of the application process, and running/enforcement costs of the licensing regime. If the applicant is unsuccessful the portion of the fee that covers the running/enforcement costs is refunded to the applicant.

3.6 The Supreme Court had concerns about whether the fee structure identified as Type B was compatible with the EU Services Directive and felt that reference to the European Court of Justice was necessary for clarification.

3.7 **The European Court of Justice (ECJ) (November 2016)**

The ECJ ruled that the Type B approach of fee setting (outlined in 2.5 above) was not compatible with the EU Services Directive, arguing that the Directive

'precludes the requirement for the payment of a fee, at the time of submitting an application for the grant or renewal of a authorisation, part of which corresponds to the costs relating to the management and enforcement of the authorisation scheme concerned, even if that part is refundable if that application is refused.'

3.8 As with many other local authorities, the current position in Bridgend is that fees are charged in a Type B approach with all costs included in the initial application. It is extremely rare for applications under these licensing regimes to be refused a licence, however a refund would be given in those circumstances.

4. **Current situation / proposal.**

Implications for the Council

- 4.1 The ECJ ruling presents a number of issues for Local Authorities in discharging duties under certain licensing regimes. Licensing Authorities now need to consider how to structure their fees under the Type A approach as mentioned in 3.5 above. The judgement suggests that there should be 2 separate fees in place; one to cover the authorisation costs e.g. the cost involved in receiving and considering an application, and an additional fee only paid by successful applicants to cover the running and enforcement of the licensing regime.

It is worth noting on this point that the Supreme Court view – which still holds – was that there is nothing to stop licensing authorities making the payment of such a fee a condition of holding a licence. This would mean that authorities could withhold a licence until payment of the relevant fee had been received:

'...nothing in article 13(2) precludes a licensing authority from charging a fee for the possession or retention of a licence, and making this licence conditional upon payment of such fee. Any such fee would however have to comply with the requirements, including that of proportionality, identified in section 2 of Chapter III and section 1 of Chapter IV. But there is no reason why it should not be set at a level enabling the authority to recover from licensed operators the full cost of running and enforcing the licensing scheme, including the costs of enforcement and proceedings against those operating sex establishments without licences.'

- 4.2 As indicated in 3.1 above, the Services Directive does not currently apply to taxi related fees (drivers, operators and vehicles), or fees and charges under the Gambling Act 2005 and Licensing Act 2005. It will apply to licensing regimes such as sex establishments, street trading, animal related licences (pet shop, animal boarders etc.), and houses in multiple occupation. Responsibility for these fees are shared between this Committee and the Joint Committee for Shared Regulatory Services.
- 4.3 In light of the ECJ judgement, the Shared Regulatory Service will, in consultation with this Council's legal services, begin a review of the process of issuing licenses and the associated fees to ensure compliance with the Services Directive. Local authorities are awaiting further guidance from the Local Government Association and Government on this matter. It is envisaged that any changes to fee structures will be in place by June 2017.

Importantly, the opinion of the Advocate General and the commentary contained in the judgement of the ECJ go beyond the specific issues that had been referred to it, and make further challenges on the issue of licensing fees highly likely. The opinion and the commentary in the ruling appears to reopen the issue of whether including the costs of enforcing licensing regimes within licence fees is compatible with the Services Directive, with a strong indication that the Advocate General and ECJ believed that it is not. The Supreme Court's view on this issue remains in place at the current time, meaning councils can continue to include these costs in their licence fees.

5. Effect upon Policy Framework & Procedure Rules.

- 5.1 The Committee's powers to set fees are outlined within the Council's Constitution.

6. Equality Impact Assessment

- 6.1 A high level equality impact assessment (EIA) has been undertaken on the Council's budget proposals and updated MTFS and reported to Council on 10 March 2016.

7. Financial Implications.

- 7.1 The Licensing Service is required to be self financing within the limitations of statute.
- 7.2 The Type A approach may increase the administrative burden on the Licensing Section especially if it involves pursuing non-payment of the second fee; however these costs will need to be considered and factored into the new fee structure.

8. Recommendation.

- 8.1 It is recommended that the report is noted and Committee receive a further report on this matter to ensure the Council's licensing processes reflect those advocated by the European Court of Judgement.

P A Jolley
Corporate Director Operational and Partnership Services

January 2017

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Background documents

None

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO LICENSING COMMITTEE

27 JANUARY 2017

REPORT OF THE CORPORATE DIRECTOR OPERATIONAL AND PARTNERSHIP SERVICES

APPLICATION FOR THE FORD JOURNEY PLUS TO BE APPROVED AS A TYPE OF VEHICLE SUITABLE FOR USE AS A HACKNEY CARRIAGE IN BRIDGEND

1. Purpose of Report.

- 1.1 The purpose of the report is to consider the suitability of a Ford Journey Plus to be licensed to carry six passengers as a Hackney Carriage in Bridgend. A similar vehicle will be available for inspection at the meeting.

2. Connection to Corporate Improvement Objectives/Other Corporate Priorities

- 2.1 The proposals are necessary to enable the Council to discharge its functions as a taxi licensing authority.

3. Background.

- 3.1 Under the current licence conditions for Hackney Carriages, vehicle seats must be of a minimum size to be considered suitable for licensing. This is to ensure that passengers can travel in safety and comfort. The following excerpt is from the current policy relating to vehicle specifications:

The vehicle must be of sufficient seating capacity to carry at least four and not more than eight passengers in addition to the driver. The seating capacity, head and knee room shall be as follows:-

(a) Height (Inside): From the top of the seat cushion to the lowest part must be not less than 30".

(b) Knee Space: The measurement between the front of the rear seat and the rear of the driver's seat be not less than 8" when the driver's seat is in a position for a driver of average height.

(c) Seat Width: The width of the back seat from the squab to the front edge must not be less than 17".

Condition (c) above does not apply to rear facing seats in Council approved purpose built vehicles.

(d) Rear Seat (Length): The length of the rear seat measured in a straight line over the majority of its length be such as to allow adequate seating accommodation to the extend of at least 16" per person.

4. Current situation / proposal.

- 4.1 A request has been made by Mr Byron Davies for the licensing authority to consider the Ford Journey Plus as a type of vehicle suitable for use as a hackney carriage in Bridgend CBC. Mr Davies has not made an application but wishes to order a custom made vehicle to replace an existing vehicle. He has advised that there is a four month build process for this type of vehicle.
- 4.2 The Ford Journey Plus is a purpose built hackney carriage, converted by Cab Direct. The vehicle is marketed as being capable of accommodating a driver, four seated passengers and a wheelchair passenger. Alternatively, without a wheelchair passenger, there are two 'tip and turn' foldaway seats in the rear that would allow the vehicle to carry six seated passengers alongside the driver.
- 4.3 The vehicle was inspected by a Licensing Enforcement Officer and was found not to be suitable to be licensed in its present form as it did not meet the dimensions as specified in the hackney carriage vehicle specifications policy. The two rear 'tip and turn' foldaway seats did not comply with the vehicle specifications policy as the rear seat width was 15.5 inches and as such below the required 17 inches.
- 4.4 A photograph available from the Cab Direct website of the two rear foldaway seats is attached at Appendix A. It is considered that these two foldaway seats do not provide sufficient safety and comfort to passengers. In addition, although not covered by current policy guidelines, officers have reservations about the leg position and comfort for some passengers sitting in the rear foldaway seats as a ridge runs in front of the seats forming a "well" between these rear seats.
- 4.5 Following the outcome of the vehicle inspection, Mr Davies was advised that the vehicle did not meet the minimum specification but could be licensed for fewer passengers, but has now formally requested that the vehicle be considered by the licensing authority to carry six passengers. A copy of Mr Davies' letter is attached at Appendix B.
- 4.6 Mr Davies states that the rationale behind this request being that Bridgend CBC already licences the Vauxhall Zafira and Fiat Doblo which have smaller rear seats than the Ford Journey Plus. Furthermore, Torfaen, Bristol and Portsmouth permit the Ford Journey Plus to be licensed to carry six passengers. However, these authorities may have determined that different minimum specifications apply to either hackney carriage or private hire vehicle licensing.
- 4.7 Current vehicle policy only specifies the total number of passengers a vehicle is licensed to carry and does not specify the individual seats in the vehicle that can be used. Therefore, if a wheelchair is not being used, the council cannot impose a condition that would stop one foldaway seat being used by a passenger.
- 4.8 If the vehicle is approved to carry five passengers, this would allow the vehicle to carry four seated passengers and a wheelchair passenger. However, when no wheelchair passenger is present, this may result in one of the foldaway seats being used to carry a fifth seated passenger.

- 4.9 The presence of two foldaway seats that cannot be used by passengers may cause confusion for the public if the driver is required to refuse a journey from passengers who wish to use the rear seats.
- 4.10 Officers would be satisfied that the vehicle be plated for the carriage of five passengers, four in the fixed suitable seats as identified in the Policy and a wheelchair passenger. As the vehicle is being purpose built and has not as yet been ordered, it would seem appropriate to have the two rear foldaway seats excluded from the specification.
- 4.11 The reason for the minimum standards that appear within the policy are to ensure that regardless of the distance the vehicle is required to travel for any booking, fare paying passengers will be provided with a suitably comfortable journey. If the application is granted, Members cannot restrict the type of work undertaken with the vehicle, or impose a maximum distance the vehicle can travel for any one fare.
- 4.12 Should Members be minded to endorse this type of vehicle as suitable for licensing, applicants will need to provide a safety certificate in relation to the alterations made following manufacture and the DVLA's V5 document will need to show the correct configurations in relation to seats, prior to the vehicle being licensed.
- 4.13 Members are also requested to consider the suitability of this type of vehicle for private hire use.

5. Effect upon Policy Framework & Procedure Rules.

- 5.1 None

6. Equality Impact Assessment

- 6.1 There are no equality implications arising from this report. The configuration of this vehicle would allow for wheelchair accessibility.

7. Financial Implications.

- 7.1 There are no financial implications arising from this report.

8. Recommendation.

- 8.1 Having considered the above information and inspection, Members are requested to consider:
- (i) Rejecting the request for the Ford Journey Plus to be licensed to carry six passengers in its current form with the two foldaway seats present in the vehicle but authorise that licences be issued for 5 passengers.
 - (ii) Determine whether the decision should also apply to private hire vehicle licensing.

P A Jolley
Corporate Director Operational and Partnership Services

Date – report send out

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Background documents

Ford Journey – Cab Direct taxi sales brochure

Appendix A

**Tip & turn seats available in the
Plus model for even more
carrying capacity.**



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Appendix B

Byron Davies

22 November 2016

Licensing Section
Bridgend County Borough Council
Civic Offices
Angel Street
Bridgend
CF31 4WB

Dear Sir or Madam,

I would like to formally request an appointment/meeting with the licensing sub-committee to discuss licensing a vehicle for Hackney Carriage, for which I have been informed by a council officer does not quite meet the council policy/criteria for Hackney Carriage.

I cannot formally apply for a licence as the vehicle has been ordered, but there is a 20 week lead time for the vehicle to be built and converted for wheelchair use. However a car with the exact internal specification can be provided for your inspection. The vehicle in question is a Ford Grand Journey (based on the Ford Grand Tourneo Connect) which is a 7 seat car (including driver) or 5 seat with wheelchair. I have been informed that the rear 2 seats do not comply with the council's policy as the seat base is just over an inch too short.

This particular vehicle has been licensed for Hackney Carriage with other local authorities in the U.K. including Torfaen, Bristol City Council and Portsmouth. I believe there may be a precedent to licence this car for 6 passengers in Bridgend as the Vauxhall Zafira and the Fiat Doblo are licensed for 6 passengers with rear seat bases that are smaller on these cars than the car I intend to licence. Also this vehicle has more legroom, and the rear row of seats have easier access than the Vauxhall and the Fiat, please also may I add that this car is fully DDA compliant and I think that the council should consider this fact too.

Yours Sincerely,

Byron Davies

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