

LICENSING COMMITTEE

Application for a Hackney Carriage Licence – Pedicab Lorna Manlove

9 June 2022

Report of Licensing Manager

PURPOSE OF REPORT

For members to determine an application to licence a pedicab as a hackney carriage vehicle. If granted, make recommendations to Cabinet on an appropriate table of fares, agree licensing standards for pedicab riders/drivers and set licence conditions for pedal powered hackney carriages.

This report is public.

RECOMMENDATIONS

- a) **The Committee is requested to determine the application to licence a pedicab as a hackney carriage vehicle, and;**
- b) **Approve suggested conditions of licence for non-motorised hackney carriages such as pedicabs, with or without modification, and;**
- c) **If a decision is taken to grant a licence, members will be required to consider an alternative table of fares for pedal powered hackney carriages, and;**
- d) **Approve licensing standards for riders/drivers of pedicabs.**

1.0 Background

- 1.1 An application for a Hackney Carriage vehicle licence has been received by Ms Lorna Manlove, 61 Fulwood Drive, Bare, Morecambe, LA4 6QY.
- 1.2 The vehicle Ms Manlove wishes to licence is a Pedicab. Pedicabs are small three wheeled vehicles with a seat, pedals, and handlebars for the operator and usually a hooded cab for passengers. They are primarily pedal powered but may also be supplemented by an electric motor. Examples are provided for reference at **Appendix 1**.
- 1.3 The proposed business model and vehicle detail/specification provided by Ms Manlove as part of the application is attached at **Appendix 2** in a document titled "A new era in the visitor economy of Morecambe; A proposal to operate pedicabs by Bare Lady`s". Ms Manlove wishes to operate daily during holiday season and bank

holidays from 9am until dusk, predominantly undertaking pre-booked tours, with or without local food and drink offerings.

- 1.4 Under Section 80 of the Local Government (Miscellaneous Provisions) Act 1976, 'private hire vehicle' is defined as '...a motor vehicle constructed or adapted to seat fewer than nine passengers, other than a hackney carriage or public service vehicle or a London cab or tramcar, which is provided for the hire with the services of a driver for the purpose of carrying passengers...' Consequently, Pedicabs could not be considered for use as private hire vehicles. Therefore, they must be licensed as a Hackney Carriage.
- 1.5 Pedicabs can legally operate in London as Stage Carriages under Section 4 of the Metropolitan Public Carriage Act 1869. This decision was made by the High Court in the case of R (oao Oddy) v. Bugbugs Ltd. As such, pedicabs can legally ply-for-hire in any street or place within Greater London. They must charge single and separate fares per passenger. The licensing provisions in Section 6 of the Act do not extend to Stage Carriages but apply only to Hackney Carriages. There are, therefore, no licensing provisions in legislation that apply to pedicabs in London.
- 1.6 Outside London, pedicabs are classified as Hackney Carriages, they can therefore be licensed and can ply-for-hire (i.e. be available to passengers for immediate hire). This decision was made by the Court of Appeal in the case of R v Cambridge City Council ex-parte Lane (1999). The decision in this case was that pedicabs fall under the definition of a Hackney Carriage under the Town Police Clauses Act 1847 and, as such, must be licensed as Hackney Carriages. Fares are charged at a flat rate regardless of how many passengers are carried, in contrast to fares per passenger if operating as a Stage Carriage (in London).

The consequence of pedicabs being classified as Hackney Carriages outside London is that there are many difficulties in transposing hackney carriage regulations in order that they may apply equally to pedicabs. From research many local authorities, some of which have been very keen to set up or endorse pedicab services, have simply said 'no' to granting licences or given up on the basis that it is too difficult.

- 1.7 It is important therefore that any regulations or standards set by members are not specific to this application and business model so can be utilised for future applications.

2.0 Report

- 2.1 Lancaster City Councils Private Hire and Hackney Carriage Licensing Policy states the following in respect of applications to licence Tuk-Tuks/Pedicabs.

5.2 - Tuk-tuks are three-wheeled motorised versions of traditional rickshaws. They are usually powered by a motorcycle engine, have handlebars rather than a steering wheel and are commonly used as a method of transport in countries such as India, Thailand and Pakistan. Pedicabs are small three wheeled vehicles with a seat, pedals, and handlebars for the operator and usually a hooded cab for passengers.

Tuk-tuks and Pedicabs do not currently meet the vehicle specifications for Private Hire or Hackney Carriage vehicles, therefore any request for licensing such vehicles will be determined by Licensing Committee on a case-by-case basis.

- 2.2 It is therefore a requirement for members of Licensing Committee to determine the application from Ms Manlove. There are however a number of relevant factors to

consider prior to making the decision whether to grant a hackney carriage licence to a pedicab as described in this report.

Limitation of Numbers

- 2.3 At the present time, Lancaster City Council cap the number of Hackney Carriage licences at 108. The Councils Private Hire and Hackney Carriage Licensing Policy states the following in respect of the limitation of numbers.

s5.22.2 “The Transport Act 1985 s16 provides the key legal provision in respect of numbers of hackney carriages to be licensed. A local authority has a choice of whether to limit the number of hackney carriage vehicle licences issued or not, however this is a qualified choice, and a local authority can only choose to limit the number of hackney carriage proprietors’ licences if the local authority is satisfied that there is no significant unmet demand for hackney carriages.

The Department for Transport’s Best Practice Guidance 2010 para 45-51 deals with the matter of numbers of hackney carriage vehicle licences (also known as proprietor licences), the Guidance generally questions the benefits of limiting the numbers of licences issued and details that where such limits are imposed regular surveys should be undertaken to assess whether significant unmet demand does exist.

Lancaster City Council currently limits the number of hackney carriage proprietors’ licences at 108. Regular unmet demand surveys have identified no significant unmet demand for hackney carriages.

It was identified during the consultation period that there is a wish for greater availability and accessibility for wheelchair accessible licensed vehicles. The Council has considered whether it is appropriate to licence additional specialist vehicles to provide for the needs of people travelling in wheelchairs.

From implementation of the taxi policy two Hackney carriage proprietor licence applications will be accepted. Vehicles intending to be licensed as a Hackney Carriage must meet the 2030 vehicle specification in terms of being zero emission as well as being fully wheelchair accessible. Further applications meeting the criteria above and beyond the two approved will be considered by Licensing Committee.

Whilst there has been much case law published on the matter of numbers of hackney carriage licences issues, there does not appear to be any legislative provision including case law that prevents the allocation of additional hackney carriage proprietor licences even when no significant unmet demand has been identified, the test that the council must satisfy is that any such decision must not be “Wednesbury unreasonable”. The term Wednesbury unreasonable comes from a case law which defines Wednesbury unreasonable as being so unreasonable or irrational that no reasonable person acting reasonably could have made it.”

- 2.4 Any decision to depart from the current policy in relation to the limitation of hackney carriages is not necessarily illegal, rather a question of reasonableness. As part of the Private Hire and Hackney Carriage Licensing Policy as set out above, two additional licences were approved for allocation, on the basis that they meet the 2030 vehicle specification (zero emission and wheelchair accessible). No applications or expressions of interest have been received regarding the additional provisions.
- 2.5 It is important to note that hackney carriage vehicle licence fees, include the cost associated with the unmet demand survey, in order to protect the current 108 licence

holders, it is advised that if a licence is granted to the pedicab, the licence includes a condition ensuring the licence cannot be transferred to a motorised vehicle.

Fare Setting

- 2.6 Section 65 of the Local Government (Miscellaneous Provisions) Act 1976 makes provision for the Council to fix the rates of fares within the district for time, distance and all other charges in connection with the hire of a hackney carriage. The table of fares is ordinarily attached to the inside of a hackney carriage; this allows members of the public to view all charges when hiring a vehicle.
- 2.7 Members may wish to consider setting a non-motorised table of fares for pedicabs, one that considers charges associated with time rather than distance (as is current position). e.g., £10 per 30 mins. Alternatively, the table of fares of non-motorised pedicabs could mirror that of motor vehicles although to do so would impact on the business operating model proposed by Ms Manlove in her application.

The current table of fares is attached at **Appendix 3**.

- 2.8 The setting of fares is an Executive function as it is not one that is listed in the Local Authorities (Function and Responsibilities) (England) Regulations 2000 and therefore falls to the Cabinet to make the decision. In its capacity as an advisory Committee to Cabinet, the Licensing Committee are required to refer any decision to Cabinet for approval.

Permitted Use of Promenade

- 2.9 Colleagues from the City Councils Public Realm have approved use of the Promenade (Morecambe) from the Midland Hotel to Wynnasty Lane, Heysham only. Use of the pedicab could also be utilised on the Public Highway. Ms Manlove has expressed an interest in operating the pedicab on the Public Highway between the Midland Hotel and Happy Mount Park. Officers from Public Realm were concerned that due to reduced width of some parts of the promenade, for safety reasons they have limited the usage to the stretch of promenade identified.
- 2.10 It is advised that if a licence granted to the pedicab, the licence includes a condition restricting its use along the Promenade in line with the approved route specified by Public Realm.
- 2.11 Any user of the Promenade will also be required to comply with local byelaws. Attached at **Appendix 4**.

Licensing Standard for Riders/Drivers

- 2.12 Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 provides that a Council shall not grant a hackney carriage drivers licence unless they are satisfied that the applicant is a "fit and proper" person to hold the licence. The application criteria for hackney carriage drivers are set out in section 4 of the Councils Private Hire and Hackney Carriage Licensing Policy. The application process requires a number of tests be satisfied before the Council can consider an individual "fit and proper" to be a licensed driver (private hire or hackney carriage). In terms of new applicants, they are required to provide:

- Evidence of right to work
- Fully completed application form
- 2 recent passport size photos
- Satisfactory DVLA Group 2 medical (completed within 1 month by a medical practitioner who has had sight of the applicant's medical summary)
- A full current DVLA driving licence held for a minimum period of 12 months and a time limited DVLA check code
- An appropriate practical driving certification from an approved training provider
- An enhanced DBS certificate for the role of taxi driver and other workforce together with DBS update service details
- An overseas check – certificate on good conduct
- A BTEC level 2 / City and Guilds level 2 Certificate in Introduction to the Role of the Professional Taxi and Private Hire Driver issued by Lancaster and Morecambe College – incorporating the Lancaster City Council taxi driver's knowledge test
- The Licence fees

2.13 Section 47 Town Police Clauses Act 1847 makes it an offence for the driver of a hackney carriage to do so without a licence, it is therefore necessary to ensure that the riders/drivers of pedicabs are appropriately licensed, by way of obtaining a suitable hackney carriage drivers' licence from the Licensing Authority.

2.14 Members of Licensing Committee are therefore required to determine the application criteria required for drivers of pedicabs, by moderating existing criteria or by requiring applicants to meet current application standards. The Licensing Manager has observed the standards in other areas who have licensed pedicabs in operation, standards vary, with many applying the same standard as those licensed to driver motor-vehicles, other have adapted the standards to suit the local operations by removing certain elements of the application criteria.

2.15 Specific training requirements for cyclists or a higher standard of application criteria should be considered if use of the pedicab is authorised on the public highway, given the associated risks/road safety awareness required.

Safety and Comfort Considerations

2.16 The main aim of the Private Hire and Hackney Carriage licensing regime is to protect public safety. It is important that any vehicle that departs from the current hackney carriage vehicle specification meets a set safety and comfort standard, additionally the vehicle must be tested and deemed roadworthy prior to licensing and periodically throughout the licence duration.

2.17 Most licensed (motor) vehicles have a range of safety features as standard such as seat belts, driver and passenger airbags, crumple zones, anti-lock braking systems (ABS), and traction control. As technology improves, newer cars are being manufactured with more advanced safety features such as autonomous emergency braking, pedestrian detection, adaptive cruise control, visibility aids, speed limiting devices, attention monitoring systems, tyre pressure monitoring systems, These features aim to minimise the likelihood of collisions and aim to reduce injuries to the driver and passengers in the event of an accident.

Pedicabs have far fewer safety features than standard cars. They can be fitted with seat belts but they offer very little protection to the driver/passenger(s) in the event of a collision, particularly if authorised for use on the public highway. Pedicabs have an open compartment, which poses a greater risk of objects entering and potentially

causing injury, or passengers being thrown from the vehicle or injuring limbs etc during a collision.

- 2.18 Ms Manlove has set out the specification of the pedicab she wishes to licence, key features include front and rear light reflectors, a bell, front brake and rear twin hydraulic braking system, seat belts and optional cycle helmets for passengers.

The pedicab will be fully insured for public hire and have the relevant public and product liability cover.

Testing Arrangements

- 2.19 Currently, any licensed vehicle is subject to an annual MOT and interim vehicle tests at the Councils Vehicle Maintenance Unit. The frequency of the tests is determined by the age of the vehicle. This arrangement ensures that the fleet of vehicles licensed with Lancaster City Council are mechanically roadworthy and maintained in good working order for the duration of the licence.

- 2.20 Pedicabs must also be tested regularly, it is suggested that prior to initial licensing and every 6 months thereafter is subject to a routine service. The Licensing Manager has discussed the service requirements with a local "bike shop" who have expressed a commitment to service the pedicab as suggested and provide written confirmation of roadworthiness to the Licensing Authority.

If members decide to licence the pedicab a condition will be attached to the licence to ensure a daily/monthly check is conducted as is the current position with motorised hackney carriages. eg, tyre pressure/chain/bell/clean/dry.

Standard Conditions

- 2.21 s47 of the Local Government Miscellaneous Provisions Act 1976 says the following in respect of the licensing of hackney carriages.

(1) A district council may attach to the grant of a licence of a hackney carriage under the Act of 1847 such conditions as the district council may consider **reasonably necessary**.

(2) Without prejudice to the generality of the foregoing subsection, a district council may require any hackney carriage licensed by them under the Act of 1847 to be of such design or appearance or bear such distinguishing marks as shall clearly identify it as a hackney carriage.

(3) Any person aggrieved by any conditions attached to such a licence may appeal to a magistrates' court.

- 2.22 The Licensing Manager has drafted a set of standard conditions for non-motorised hackney carriages, attached at **Appendix 5** for members consideration.

3.0 Council Guidelines and Legislation

- 3.1 Relevant legislation has been highlighted throughout the report.

4.0 Options Available to members:

- 1) To grant the application with the suggested conditions of licence for non-motorised hackney carriages, with or without modification.

- 2) To refuse the application for a hackney carriage licence,
- 3) To set a table of fares for unmotorised hackney carriages and make recommendations to Cabinet for approval, and;
- 4) To determine the licensing requirement of pedicab riders/drivers.

Ms Manlove has been invited to Licensing Committee to address members directly and answer any questions regarding the application.

5.0 Conclusion

- 5.1 Members are requested to determine the application to licence a pedicab as set out in the proposed business model as a hackney carriage. Consideration must be given to the current limitation on numbers of hackney carriage licences.
- 5.2 Drivers/Riders must be appropriately vetted/licensed to carry passengers, members therefore are requested to set the application criteria for non-motorised hackney carriage drivers/riders. It is recommended as a minimum standard that an enhanced DBS certificate (and update service) and medical examination is required, along with other administrative documents (right to work/DVLA check code/photograph etc).
*It is a legal requirement that applicants hold a full current DVLA driving licence held for a minimum period of 12 months prior to licensing.
- 5.3 Members may wish to consider an alternative table of fares for non-motorised hackney carriages such as the pedicab described. Some local authorities set fares in terms of time hired rather than distance travelled. Any approved fare tariff should accommodate the national living wage, (£9.50 per hour), overheads and maintenance costs.
- 5.4 Public Realm have approved use of the Promenade (Morecambe) between the Midland Hotel and Wynnasty Lane, Heysham only. Additionally, Members must determine permission for use on the public highway.
- 5.5 Prior to licensing and for the duration of the licence, any licensed pedicab must be roadworthy. Routine servicing of the vehicle must also be undertaken. The Licensing Manager has obtained advice from a local provider who could be instructed to undertake the servicing of non-motorised hackney carriages such as pedicabs and this would be at the expense of the pedicab operator.
- 5.6 It must be highlighted that the licensing of such vehicles aligns with the Councils wider aims of being greener and cleaner and would complement the aspirations for the Eden Project.
- 5.7 Nonetheless, the primary consideration of the licensing regime is public safety, and members may wish to discuss the merits of licensing pedicabs for use as hackney carriages, the safety implications and compromise on comfort levels in determining this application and future similar applications or proposals that may be made..
- 5.8 Members are reminded to provide full and detailed reasons for their decision.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural

Proofing)

FINANCIAL IMPLICATIONS

Financial Services have not been consulted

LEGAL IMPLICATIONS

Ms Manlove has the right of appeal against the decision of the Council.

Any appeal against a decision to refuse a Hackney Carriage licence would be to Crown Court.

BACKGROUND PAPERS

Court of Appeal R v Cambridge City Council
ex-parte Lane (1999)

Contact Officer: Jennifer Curtis

Telephone: 01524 582732

E-mail: jcurtis@lancaster.gov.uk

Ref: JC/Pedicab