

SUBJECT:	LICENSING OF TUK TUKS AS PRIVATE HIRE VEHICLES
DIRECTORATE:	COMMUNITIES AND ENVIRONMENT
REPORT AUTHOR:	THOMAS CHARLESWORTH, LICENSING OFFICER

1. Purpose of Report

- 1.1 To consider an application in the form of a proposal, received from Christine Kimbrell (the applicant), Managing Director of both Seyexclusive Ltd and Holla Tuk Tuk Ltd to licence a Tuk Tuk as a private hire vehicle.

2. Executive Summary

- 2.1 To seek the Committee' decision on whether to depart from its current policy to licence a vehicle that does not meet all of the criteria as set out in the private hire vehicle specification contained within the Hackney Carriage & Private Hire Licensing Policy.
- 2.2 The onus is on the applicant to explain to the Licensing Committee why it should depart from that Policy and allow Tuk Tuks to be licensed as private hire vehicles in Lincoln.
- 2.3 Reasons should be given for the determination and if policy has been departed from, then reasons for such departure should be given.

3. Proposal

- 3.1 An application in the form of a business proposal has been received into the Licensing Office detailing a plan to provide a private hire service between designated routes in Lincoln, these being:
- Castle Hotel, Westgate;
 - Train Station, St Mary's Street;
 - Tower Hotel, Westgate;
 - White Hart Hotel, Bailgate;
 - Drury Lane;
 - St Martins Lane;
 - DoubleTree by Hilton Hotel Lincoln, Brayford Wharf North
- 3.2 This proposal can be seen at appendix A.
- 3.3 They propose to use a motorised Tuk Tuk to carry out this service and have approached the Licensing Team about the Licensing Requirements.

- 3.4 The application states, 'it is anticipated that we would operate all year round from 11am – 10pm Thursday to Sunday depending on demand. We would also consider peak times on Friday and Saturday evening, up until 11pm'.
- 3.5 In further correspondence, the applicant stated, "We will have to test the Tuk Tuks, we will definitely be operating all the holidays. We then would start operating on a Thursday – Sunday 11-11 hrs. This will be all down to demand and we will know more of the exact schedule after running it a few months. If there is no demand we won't run the Tuk Tuks."
- 3.6 According to articles published on the Lincolnshire Live website the applicant has stated that, "the company plans to start off with one taxi to see how it goes and then in a year and a half to expand to around 10 Tuk Tuks covering more of the city."
- 3.7 The applicant has confirmed in emails to the Licensing Team that if successful in their proposal they will be applying for "2 more within 6 months and a further 2 within 1.5 years". They believe that "Lincoln could easily utilise 5 Tuk Tuks, if there is demand there."

4. Legislation

- 4.1 Any vehicle used for private hire purposes (that is collecting for a journey which has been pre-booked) must be licensed as a private hire vehicle under the provisions of the Local Government (Miscellaneous Provisions) Act 1976 (the Act).
- 4.2 According to the Act a private hire vehicle "means a motorised vehicle constructed or adapted to seat [fewer than nine passengers], other than a hackney carriage or public services vehicle [or a London cab] [or tramcar], which is provided for hire with the services of a driver for the purposes of carrying passengers;"
- 4.3 A district council may grant a private hire vehicle licence (upon application) providing that the motorised vehicle is:
- suitable in type, size and design for use as a private hire vehicle;
 - not of such a design and appearance as to lead any person to believe that the vehicle is a hackney carriage;
 - in a suitable mechanical condition;
 - safe; and
 - comfortable
- 4.4 There must also be in force, in relation to the use of the vehicle, a policy of insurance as complies with the requirements of the Road Traffic Act 1988.
- 4.5 It is important to recognise that the district council is not placed under a duty to issue a licence once an application has been made; it has a discretion.
- 4.6 Therefore, even if the vehicle is suitable and satisfactory, provided the refusal is not to limit the number of private hire vehicles licensed within the district, the

district council can exercise its discretion and refuse to grant the licence.

- 4.7 A district council may also attach to the grant of a licence such conditions as they may consider reasonably necessary.
- 4.8 However, the Council cannot condition a private hire vehicle to limit the area of the district in which it can operate. Once a private hire licence has been granted to a vehicle, that vehicle can undertake journeys anywhere in England and Wales. That is irrespective of the local authority area where the journey commences, areas through which the journey passes and, ultimately, the area where the journey ends.
- 4.9 This means that's regardless of the applicant's intended use as detailed in their proposal, if a licence is granted to the applicant they would be able to operate their private hire vehicle throughout England and Wales.

5. Policy

- 5.1 A Council determines vehicle suitability through the implementation of a policy. The Hackney Carriage & Private Hire Licensing Policy was agreed by the Licensing Committee and came into effect in March 2016. This policy contains a vehicle specification for private hire vehicles that can be licensed in Lincoln.
- 5.2 The Council will consider all applications for a private hire vehicle licence on their own merits once it is satisfied that the appropriate criteria have been met. Currently, if all policy criteria are met then Licensing Officers have delegated authority to issue a licence once an application is received. If an applicant does not meet all policy criteria then the Licensing Committee determines an application. The Licensing Committee will then decide whether to depart from its policy and issue a licence by determining the appropriate requirements.
- 5.3 It will be the responsibility of an applicant to show why in each case the Council should depart from the policy. Where it is necessary for the Council to depart substantially from its policy, clear and compelling reasons will be given for so doing.
- 5.4 The Licensing Committee did deviate from its current policy in June 2017 to allow a private hire operator permission to licence a Lamborghini Huracan as a private hire vehicle for restricted private hire use.
- 5.5 Whilst the vehicle was never licensed, due to no application being received, it is important to note that the Licensing Committee did not specify licence conditions that would limit the area of the district in which the vehicle would operate. It instead specified the type of private hire work that this vehicle could be used for, in this case, chauffeur services.

6. Tuk Tuk specification and considerations

- 6.1 A Tuk Tuk rests on three small wheels (one at the front and two at the back) there is a cabin for the driver in the front and seating in the rear for two people.

Tuk Tuks have handlebar controls instead of a steering wheel, making them in effect a tricycle. They are commonly used as a method of transport in countries such as India, Thailand and Pakistan.

- 6.2 The model the applicant intends to licence is a white 2017 Piaggio Ape Calessino, fitted with a retractable hood, seatbelts, lighting, grab/hand rails, an audible device (horn) and a spare wheel. It is powered by a 197 cc, three valve, electronic injection, petrol engine, and a four speed gearbox that complies with Euro 4 standards. The maximum speed of this model is 37.9mph.
- 6.3 Under UK law there is no minimum speed limit for motorways and dual carriageways and very few restrictions on public roads in regards to the setting of a minimum speed limit. One example is the Kingsway Tunnels in Liverpool which are set at 10mph.
- 6.4 As stated at 4.9 above a licensed private hire vehicle can operate anywhere in England and Wales and you cannot condition a licence to limit that area and restrict a vehicle to designated routes. Although the applicant has stated the designated routes of operation in their proposal there is no guarantee that those routes will not, from time to time, be closed and diversion routes put in place.
- 6.5 The Licensing Committee should have regard to the fact that if Tuk Tuks are licensed they may operate outside of 30mph zones. For instance, the national speed limit on dual carriageways and motorways is 70mph and it could be reasoned that a vehicle with a maximum speed of 37.9mph could pose a potential risk to public safety whilst driving on one of these roads.
- 6.6 Another point to consider is that the maximum speed of a vehicle will vary dependent on the gradient of the road.
- 6.7 According to the documents provided by the applicant the mass in running order (MiRO) of the vehicle is 395kg. The MiRO is the basic unladen weight of the vehicle straight from the factory.
- 6.8 The gross vehicle mass (GVM) is set at 645kg and this weight is defined as the maximum operating weight/mass of a vehicle as specified by the manufacturer. This figure includes the vehicle's chassis, body engine, engine fluids, fuel accessories, driver, passengers and cargo but excludes that of any trailers.
- 6.9 The difference between the MiRO and GVM is 250kg or 39.4 stone (551 pounds). This gives a total maximum weight (high estimate) for each person in the vehicle as no more than 83.3kg or 13.1 stone (183.6 pounds).
- 6.10 Taking into account the GVM the Licensing Committee needs to be satisfied that a fully laden Tuk Tuk powered by a 197 cc petrol engine can cope with going uphill and downhill, linking the top and bottom of Lincoln's Steep Hill as described in the applicants proposal. That the vehicles brakes which are pedal operated, dual circuit; front and rear drum are sufficient in their breaking capacity for a fully laden vehicle to be stopped coming downhill. Lastly, that the vehicle is

stable on three wheels taking corners on hills when fully laden.

- 6.11 Before the Licensing Committee considers whether it should licence a Tuk Tuk as a private hire vehicle it should remember that its primary concern is the safety of the travelling public, which includes the driver of the vehicle.
- 6.12 An image of a Piaggio Ape Calessino can be seen at appendix B.
- 6.13 At appendix C, you can see a brochure for this vehicle which details its technical specifications. The brochure mentions a quick-fit optional window kit; the applicant has confirmed that this will be purchased with the vehicle. It is important to note that the window kit will also add to the GVM as stated above and therefore the combined maximum weight for each person in the vehicle will be lower as stated at 6.9 above.
- 6.14 The applicant has stated that the Tuk Tuk will have a livery showing the company name of "Holla", an image of which can be seen at appendix D. The applicant Christine Kimbrell is the Director of Holla Tuk Tuk Ltd.
- 6.15 This vehicle has been imported by the applicant from Timo Streit of Streit Automobile GmbH in Germany. A contract partner for Piaggio Commercial Vehicles.
- 6.16 A copy of the German registration certificate part 2 can be seen at appendix E. This vehicle registration document is the "proof of ownership" of the vehicle.
- 6.17 At appendix F a copy of the EU certificate of conformity can be seen. This certificate is issued by Piaggio the manufacturer of the Tuk Tuk and is given to exporters / importers to show that the goods or services bought or supplied meet the required standards. The document is usually required during customs clearance of goods to some countries.
- 6.18 The applicant has made the Tuk Tuk available to members of the Licensing Committee prior to the hearing so that they could experience what it is like to be driven as a passenger in this kind of vehicle. Members were requested to travel on one of the designated routes as highlighted in the proposal (appendix A).
- 6.19 I have asked the applicant to bring the Tuk Tuk to this hearing so that members will also be able to inspect this vehicle before the Licensing Committee is asked to make a decision on whether to licence one as a private hire vehicle.

7. Current vehicle specification (contained in the policy)

- 7.1 According to the Council's policy all private hire vehicles to be licensed must have either:
- European Whole Vehicle Type Approval (M1);
 - British National Type approval; or
 - British Single Vehicle Approval (before 29 April 2009) or:
 - Individual Vehicle Approval (from 29 April 2009).

- 7.2 The applicant confirms that, as it states in their proposal, the imported Tuk Tuk they intend to licence has gone through a strict safety and compliance test.
- 7.3 This test is a pre-registration inspection for cars that have not been type approved to British or European standards. The main purpose of the check is to ensure that the vehicles have been designed and constructed to acceptable safety and environmental standards before they can be used on public roads.
- 7.4 Members will appreciate that public safety is a fundamental concern that must be considered as part of the licensing process. Therefore, the requisite individual vehicle approval (IVA) registration certificate must be issued confirming that the vehicle meets these necessary environmental and safety regulations.
- 7.5 The Tuk Tuk the applicant wishes to licence has gone through the IVA scheme and a vehicle registration certificate (V5C) has been issued by the Driver and Vehicle Licensing Agency (DVLA) confirming registration of this vehicle. This certificate contains all the essential information about the vehicle, such as the date it was first registered, its manufacturer, and the colour and engine size. It also shows who the vehicle's registered keeper is. A copy of the V5C can be seen at appendix G.
- 7.6 At appendix H a copy of the number plate authorisation certificate issued by the DVLA can be seen. This document provided by the applicant give the holder authority to obtain number plates.

8. Other vehicle specifications (contained in the policy) to be considered

- 8.1 Also within the private hire vehicle specification contained within the Council's policy are the following requirements:
- 8.2 "The vehicle shall be right-hand drive only."
- 8.3 "The vehicle shall have four road wheels with the vehicle manufacturer's recommended size of wheels & tyre specification and be equipped with a spare tyre or a means of inflation (except those vehicles designed for and running "run-flat" tyres)."
- 8.4 "Have at least four passenger doors including the driver's door, which can be opened from the inside and the outside. These can be hinged or sliding doors."
- 8.5 "The vehicle must have sufficient seating capacity to carry a minimum of 4 adult size passengers and not more than 8 passengers and be forward or rear facing."
- 8.6 "Interior lighting shall be fitted within the vehicle sufficient to illuminate the whole area and shall operate automatically when a door is opened."
- 8.7 "The vehicle must be able to carry a reasonable amount of luggage. Luggage

should be safely secured and not stored in such a way to hinder access to any doorway.”

8.8 In regards to the above requirements detailed at 8.2 through to and including 8.7 above the Tuk Tuk does not comply with these vehicle specifications. Therefore, the Council would need to depart from its policy and remove these requirements from the vehicle specification so that Tuk Tuks can be licensed as private hire vehicles.

8.9 There is an exemption contained within section 2 (seating) of appendix c (private hire vehicle specifications) of the policy that states:

8.10 “Except where application is made for a vehicle wishing to carry less than 4 passengers in which case its suitability to be licensed will be determined on its own merits.”

8.11 Once again, the Council must give clear and compelling reasons for any departure from policy.

9. Testing requirements (MOT)

9.1 Before a vehicle is presented for licensing it shall undergo a test at a DVSA Approved Testing Station. This is to ensure it meets Motor Vehicles (Construction and Use) Regulations, including emission test standards.

9.2 The vehicle shall then be tested in accordance with a standard MOT Test and be issued with a MOT Certificate.

9.3 From the date of the initial test the vehicle shall be subject to a MOT Test at intervals of not more than six months.

9.4 Depending on the unladen weight of the vehicle the MOT will either be a class 3 MOT, 3-wheeled vehicles (up to 450kg unladen weight) or a class 4 MOT, 3-wheeled vehicles (over 450kg unladen weight).

9.5 According to the EU certificate of conformity (appendix F) the mass in running order (MiRO) is 395kg therefore a class 3 MOT will be required.

9.6 The private hire test requirements as detailed above are contained in the policy and will remain a requirement in regards to the proposed licensing of Tuk Tuks as private hire vehicles.

9.7 Private hire vehicles licensed in Lincoln can only be tested by a testing station authorised by the Council. The Licensing Team has confirmed that a class 3 MOT can be performed by a number of these testing stations.

10. Public safety

10.1 One of the main aims of the private hire vehicle specification contained within the Hackney Carriage & Private Hire Licensing Policy is to ensure that licensed

vehicles are safe for use by the public, the driver and do not pose any risk to other road users.

- 10.2 Most licensed 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 etc.
- 10.3 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.
- 10.4 Tuk Tuks have far fewer safety features than standard cars. They can be fitted with seat belts (as in this case) and strengthened overhead and side-impact protection, but they offer very little protection to the driver/passenger(s) in the event of a collision. In this case the Tuk Tuk does come with a quick-fit optional window kit but the more open compartment design does pose a greater risk of objects entering the Tuk Tuk and potentially causing injury, or passengers being thrown from the vehicle or injuring limbs etc. during a collision.

11. Passenger comfort

- 11.1 Standard licensed vehicles have numerous features in the interests of passenger comfort such as conventional suspension, heating/air conditioning systems, comfortable seats, and are of a closed watertight design to eliminate the effects of adverse weather and reduce noise.
- 11.2 Tuk Tuks have a more open compartment design, meaning that passengers are subject to any adverse weather. In this case the Tuk Tuk has a retractable hood and comes with the quick-fit optional window kit, minimising the exposure for both driver and passengers. However there are no heating or air conditioning systems.
- 11.3 Due to the more open compartment design, passengers and drivers would also be exposed to any traffic pollution, although this would be comparable to the exposure experienced by cyclists in traffic.

12. Vehicle accessibility

- 12.1 Tuk Tuks may not be suitable for all people with disabilities, especially passengers in wheelchairs. It is not possible to wheel a passenger in a wheelchair into a Tuk Tuk.
- 12.2 It is important to note that there is no requirement for private hire vehicles in Lincoln to be wheelchair accessible. However private hire vehicles licensed under our current vehicle specification should have the capacity to store a collapsible wheelchair whereas there is no luggage compartment to store one on a Tuk Tuk.

- 12.3 Private Hire vehicles must carry a guide, hearing or assistance dog provided it is wearing a harness, yellow jacket with words "Hearing Dogs for Deaf People", or name or appropriate charity, free of charge unless the driver holds a letter of exemption issued by the City of Lincoln Council on medical grounds.
- 12.4 Tuk Tuks may not be suitable to carry guide dogs however by law they must. This potentially may be an issue however the choice whether to utilise the private hire vehicle will lie with the person who is being aided by the guide, hearing or assistance dog.

13. Conditions of licence

- 13.1 If the Licensing Committee is minded to grant permission to the applicant to licence a Tuk Tuk as a private hire vehicle then it is recommended to alter the condition shown below and insert the part shown in bold (or a variant thereof), on that licence.

*"The vehicle shall be of a suitable size, type, and design as approved by the City of Lincoln Council **on the 18th March 2020** for the use as a Private Hire vehicle, and shall be maintained in a safe and comfortable condition."*

- 13.2 The following condition will have to be omitted from the licence:

"4. The vehicle shall have an engine capacity of not less than 1297 cc and a minimum passenger seating capacity of four seats and maximum of eight seats."

- 13.3 The following condition will have to be added to the licence:

"The person to whom a licence is granted shall after the issue of this licence and during its currency communicate in writing to the Licensing Team of the Licensing Authority a list of the private hire drivers they intend to drive this vehicle for private hire use."

- 13.4 The reason for this condition is that a Tuk Tuk is classed as a tricycle and therefore any potential driver must be able to provide a driver's licence issued by the DVLA that shows the correct category codes and therefore demonstrate their entitlement to drive a particular type of vehicle.
- 13.5 According to Policy a licence to drive a licensed vehicle will not be granted to a person under the age of 21 and who has not held a full driving licence for a period of at least two years.
- 13.6 Driving licences must be a full UK, Northern Ireland or European Community licence.
- 13.7 An application for a vehicle driving licence cannot be processed for a person that cannot produce a valid full driving licence showing the applicant's current address.

13.8 Therefore, in this case, a driving licence must show the category codes stating they can drive both a motor vehicle and a tricycle.

14. Other considerations

14.1 To negate the need to have a similar report for any additional vehicles or replacement vehicles used by the applicant, delegation to officers is required to cater for such eventualities. This delegation will also include the power to remove, alter and / or add conditions to those licences that are issued.

14.2 The Licensing Committee may also wish to consider delegating to officers the ability to determine requests to licence similar vehicles and for conditions to be removed, altered and / or added to those licences, as required.

15. Other Local Authorities

15.1 Tuk Tuks have been licensed for private hire use in Manchester, Blackpool, Brighton, Derby, Cheshire and Ipswich. However an application to Bath and North East Somerset Council was refused in October 2016 as Members did not find the vehicles suitable in type, size and design for use as a private hire vehicle and there were concerns about safety. Newport Council refused an application in 2001 due to similar concerns.

15.2 Out of the other district authorities in Lincolnshire, only East Lindsey District Council had received an application to licence Tuk Tuks.

15.3 In 2009 the Licensing Committee of that Council refused to authorise Tuk Tuks for licensing as either hackney carriages or private hire vehicles. According to the minutes the application was refused as Tuk Tuks did not meet the criteria specified in the Council's Specification and were not suitable with regard to type, size, design, safety and comfort for use as a licensed vehicle.

15.4 The Licensing Committee can have regard to decisions by other local authorities but in making its own determination it must, first and foremost, take into account its own policy and then whether or not to depart from that policy.

16. Organisational Impacts

16.1 Legal

16.2 Section 48 of the Local Government (Miscellaneous Provisions) Act 1976 which refers to the licensing of private hire vehicles states that a district council may grant a licence on the receipt of an application form the proprietor. It further goes on to say that a district council may attach to the grant of a licence such conditions as it may consider reasonably necessary.

16.3 Under the same section of the Act, any person aggrieved by the refusal of a district council to grant a vehicle licence under this section or by any conditions specified in such a licence, may appeal to a magistrates' court.

16.4 Finance

16.5 The cost of any appeal cannot be assessed but any costs incurred would have to be met from the Legal Expenses budget

17. Decision

17.1 The Licensing Committee is asked to consider the following:

1. Whether to refuse the application, with full reasons given,
2. Whether to depart from the Hackney Carriage & Private Hire Licensing Policy, with full reasons given, to allow the applicant permission to licence a Tuk Tuk as a private hire vehicle and if so to consider the following:-;
3. If needed, for conditions to be removed, altered and / or added to that licence, as highlighted in the report, or as required by the Licensing Committee;
4. To delegate to officers authorised under the Local Government (Miscellaneous Provisions) Act 1976 (in conjunction with Legal Services and / or Chair of Licensing Committee) the power to licence additional or replacement vehicles used by the applicant and apply the conditions set out in the report above;
5. To delegate to officers authorised under the Local Government (Miscellaneous Provisions) Act 1976 (in conjunction with Legal Services and / or Chair of Licensing Committee) the power to licence similar vehicles and to apply the conditions set out in the report above.

Key Decision

No

Key Decision Reference No.

N/A

Do the Exempt Information Categories Apply

No

Call in and Urgency: Is the decision one to which Rule 15 of the Scrutiny Procedure Rules apply?

No

Does the report contain Appendices?

Yes

List of Background Papers:

None

Lead Officer:

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