

**Gambling, Licensing and Regulatory
Committee**

12 December 2017

Report of the Assistant Director of Planning and Public Protection

**Application for the renewal of Private Hire Operator Licence by Uber
Britannia Limited**

Summary

1. This report seeks Members determination of an application for the renewal of a Private Hire Operators Licence which has been made under Section 55, Part 2 of the Local Government (Miscellaneous Provisions) Act 1976, in respect of Uber Britannia Limited (Uber) to operate from Tower Court, Oakdale Road, Clifton Moor, York, YO30 4WL.
2. Uber is a registered company their head office is located at Aldgate Tower, First Floor, 2 Leman Street, London, E1 8FA. A full copy of the application can be found at **Annex 1**.

Recommendations

3. Members are asked to determine the application for the renewal of the licence in accordance with Part 2 of the Local Government (Miscellaneous Provisions) Act 1976 (1976 Act) as amended by the Deregulation Act 2015 (2015 Act).

Reason: To consider the application for renewal of a private hire operator licence as required by the legislation.

Background

Relevant Legislative Provisions

4. The relevant legislative provisions and legal context relating to private hire operator's licences are contained within **Annex 2** to this report.
5. In summary, private hire vehicles are required to be pre-booked through an operator, and such an operator must be licensed by the same Licensing Authority as the driver and the vehicle.

6. The Council has a statutory duty to grant the licence unless it considers that the applicant is not a fit and proper person to hold a licence (S.55 1976 Act as amended).
7. The licence should be granted for a five year period unless there are specific reasons in the particular circumstances of the case that justify granting the licence for a shorter period (S.55(2) 1976 Act as amended).
8. As this is an application for renewal (the current licence still being in force and due to expire on 24 December 2017), S.62 of the 1976 Act applies, and provides the *only* grounds on which an application for renewal can be refused:
 - (a) any offence under, or non-compliance with, the provisions of this Part of this Act;
 - (b) any conduct on the part of the operator which appears to the district council to render him unfit to hold an operator's licence;
 - (c) any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted;
 - (ca) that the operator has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty; or
 - (d) any other reasonable cause.
9. In the event that the application is refused there is a right to appeal to the Magistrates' Court if made within 21 days of the refusal. Pending the outcome of an appeal, the operator's licence would remain in force.
10. On the 25 April 2016 Gambling, Licensing and Regulatory Committee agreed standard conditions which would be placed on the operator's licence if granted. They can be found at **Annex 3**.
11. There is also a right to appeal to the Magistrates' Court against the imposition of conditions on a licence.
12. This report concerns an application for the renewal of an Operator's Licence. It has been brought before Members for a decision due to the level of public interest that has arisen regarding Uber vehicles operating in York, so that the application can be considered in a public meeting.

Uber Britannia Limited private hire operator licence history with City of York Council

13. Uber was issued a private hire operator's licence by the Council for the first time on the 24 December 2015, this licence expired on the 23 December 2016. The first licence was issued for a period of 12 months as at that time the Council had not implemented the provisions of S.10(3) of the 2015 Act (requirement to issue licences for five years, the Council implemented this provision from the 1 April 2016).
14. Uber submitted an application to renew this licence on the 12 December 2016. Due to the level of public interest that had arisen regarding Uber vehicles operating in York, a report was taken before Members of Urgency Committee on the 21 December 2016 to determine this application. Members determined to renew the application for a period of only 12 months, having regard to the fact that at that time Uber had only physically operated in York for four months, and the amount of public interest meant it reasonable to review the situation next year. The licence would therefore expire on the 23 December 2017. During the debate Members raised the following issues:
 - An underlying difficulty appeared to be the Deregulation Act 2015. Members were fully supportive of Officers' efforts to address the lack of coherence between areas and to bring about more regional enforcement.
 - They were concerned by the lateness of Uber's application, for whatever reason, as businesses should be more prepared.
 - There was an issue surrounding the number of complaints received that had not yet been investigated or brought to a successful conclusion. This needed to be closely monitored.
 - However it was felt that, if a licence was not granted, Uber could still operate in York using out of town drivers, which would mean even less control over who was operating in the City.
 - As Uber had been operating in York for such a short period, it would perhaps be reasonable to issue a licence for a lesser period in order to monitor complaints.
15. It is a requirement of S.55(1) of the 1976 Act that the district council shall not grant a licence unless they are satisfied that the applicant is a fit and proper person to hold an operator's licence. As part of the application process the applicant must declare relevant information within the application form relating to matters such as criminal convictions and

suspension/revocation of licences. They also have to provide criminal record checks if the applicants are not already licensed as a private hire / hackney carriage driver, and produce appropriate public liability insurance and employer liability insurance, if they have employees.

16. Uber was granted a licence on the 24 December 2015, and this licence was renewed on the 21 December 2016, having satisfied the Licensing Authority that the application met the statutory requirements.

Consultation

17. There is no requirement within the 1976 Act for a consultation to take place in relation to application for the grant of private hire vehicle, driver or operator licences. Therefore a consultation has not taken place in relation to this application.

Options

18. Option 1, grant renewal of the licence, with the standard licence conditions attached, for a period of 5 years in accordance with S.55 of the 1976 Act.
19. Option 2, grant renewal of the licence, with the standard licence conditions attached, and/or other conditions that are considered appropriate and for a lesser period as imposed by the Committee in accordance with S.55 of the 1976 Act.
20. Option 3, refuse the application if satisfied having regard to the facts set out in the application and this report that any of the grounds set out in S.62 are made out.

Analysis

21. Uber operates using an App, known as the 'Uber Platform'. A customer downloads the 'App' to their mobile phone and sets up an account with Uber. The 'App' can identify the closest vehicle that is registered to the Uber Platform, and pre book that vehicle via the relevant Licensed Operator through the App.
22. Since the renewal of their licence on the 21 December 2016 a number of complaints/enquiries have been received relating to Uber vehicles and drivers. the majority of these complaints do not, however, relate to the vehicles and drivers licensed by this Authority, they mainly relate to vehicles and drivers licensed by other Authorities who are working in York.

23. Since the renewal of Ubers operator licence on 21 December 2016 296 complaints have been received relating to hackney carriage and private hire vehicles/drivers, as of the 22 November 2017.

- 155 of these complaints relate to Uber vehicles/drivers:
 - 4 relate to an Uber vehicle/driver licensed by this Authority,
 - 129 relate to vehicles/drivers licensed by other Licensing Authorities
 - 22 general complaints relate to vehicles/drivers operating in the city and/or about the App mechanism used by Uber
- 141 of these complaints relate to non Uber vehicles/drivers:
 - 105 relate to vehicles/drivers licensed by this Authorities
 - 13 relate to vehicles/drivers licensed by other Licensing Authorities
 - 23 are just general taxi complaints/enquiries

A breakdown of these complaints can be found at **Annex 4**.

24. Complaints have been investigated by officers within the Public Protection Investigation and Compliance Team. Due to the high volume of complaints, out of hours enforcement work has taken place on Friday and Saturday evenings. This has also included joint enforcement work with Licensing Enforcement Officers from Leeds City Council, Bradford Metropolitan District Council, Calderdale Council, North Yorkshire Police and Driver and Vehicle Standards Agency.
25. As the majority of these complaints relate to Uber vehicles/drivers licensed by other Authorities, this Authority is limited to the action it can take depending upon the nature of the complaint. Where the details of those Authorities are known officers have notified the vehicles/drivers home Licensing Authority so that it may take appropriate action.
26. Uber have provided information on request in relation to complaints relating to licensed vehicles/drivers working for them, for example where we have received complaints relating to their vehicles plying for hire Uber have provided booking records for that vehicle. If required they have also suspended vehicles/drivers from their platform (this prevents the driver from receiving bookings) until they/we have investigated the complaint.

27. A number of the complaints / enquiries we received regarding Uber simply relate to the way they operate. Their bookings are taken via an App and they only provide a service to customers who want a vehicle as soon as possible (ASAP). Some believe that as they are only taking ASAP bookings they are not operating as a private hire service, their operation is more in line with hackney carriage vehicles who can ply for hire and rank and do not have to be pre booked, offering an ASAP service. There are no requirements within the 1976 Act relating to how far in advance a private hire vehicle must be pre booked. It is only a requirement that a booking for private hire vehicle must be made through their licensed operator.
28. Following the request from Members of this Committee, the Licensing Manager sent a freedom of information request to North Yorkshire Police on the 2 October 2017, the request asked for the following information:
 1. the total number of complaints/allegations received by the police relating to private hire/hackney carriage drivers licensed by City of York Council within the past year
 2. the number of these that resulted in legal action being taken
 3. the total number of complaints/allegation received by the police relating to Uber Britannia Ltd drivers licensed by City of York Council within the past year
 4. the numbers of these that resulted in legal action being taken
 5. the total number of complaints/allegation received by the police relating to private hire/hackney carriage drivers licensed by other licensing authorities within the past year
 6. the number of these that resulted in legal action being taken
 7. the total number of complaints/allegation received by the police relating to Uber Britannia Limited vehicles/drivers licensed by other licensing authorities within the past year
 8. the number of these that resulted in legal action being taken

A response was received to this request dated the 8 November 2017, advising that NPY were not obliged to provide a response to the request pursuant to S.12(1) of the Freedom of Information Act 2000, as the retrieval of information would exceed the appropriate limit.

“Due to the nature of our recording systems the information requested, if held, is not in an easily retrievable format. In order to provide the figures in relation to complaints/allegations about private hire/hackney carriage drivers and Uber drivers, it would be necessary to manually read through every crime/incident report to see if it mentioned that the suspect/offender was a private hire/Uber driver at the time of the offence.”

29. To aid Members details of Licensing Authorities that have issued Uber Britannia Ltd a private hire operator licence can be found at Annex 1. The ‘Terms and Conditions’ operated by Uber can be found at **Annex 5**, they have been taken from Ubers website.
30. Members will be aware that on the 22 September 2017 Transport for London refused to renew Uber London Limited private hire operator licence, on the grounds that they are not a ‘fit and proper’ person to hold a licence. Uber London Limited is a separate company and is not the applicant in the case of this renewal application.
31. Members will also be aware from the Applicant’s submission that on the 8 March 2016 a Licensing Sub-Committee at Reading Borough Council refused to grant Uber Britannia Ltd a private hire operator’s licence. However, that decision was specific to the facts of that case.

Conclusion

32. Members are referred to the limited grounds upon which an Operator’s Licence may be refused within the legislation. In considering the information available about the operation of Uber Britannia Limited in York over the past year, there is no evidence before your Officers that indicates the applicant is not fit and proper to hold an Operator’s licence in York. Any decision must be substantiated, be within the confines of the legislation (see S.62 of the 1976 Act, and Wednesbury reasonable).

Right of Appeal

33. The Applicant has a right of appeal under S.55(4) of the 1976 Act to the Magistrates’ Court if the application is refused – or against the imposition of conditions attached to the licence.
34. There is no third party right of appeal to the Magistrates’ Court. If approved, the recourse for a person aggrieved by the decision would be by way of judicial review.

Recommendation

35. Members are asked to determine the application.

Council Plan

36. The provision of hackney carriage and private hire licensing supports the council plan of a prosperous city for all, where local businesses can thrive.

Implications

37. The direct implication arising from this report are:

- **Financial** – There are no direct financial implications.
- **Human Resources (HR)** – There are no HR implications.
- **Equalities** – There are no equalities implications.
- **Legal** - The applicant has the right to appeal the refusal to grant an operator's licence to the magistrates' court.
- **Crime and Disorder** – There are no crime and disorder implications.
- **Information Technology (IT)** – There are no IT implications.
- **Property** – There are no property implications.
- **Other** – There are no other implications.

Risk Management

38. There are no known risks associated with this report.

Contact Details

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**Report
Approved**



Date 28/11/17

Specialist Implications Officer(s)

Alison Hartley
Senior Solicitor
Ext: 3487

Wards Affected:

All



For further information please contact the author of the report

Background Papers:

Annexes

Annex 1 – Application for a Private Hire Operator’s Licence, with associated documents – Restricted

Annex 2 – Extract from relevant legislation

Annex 3 – Standard Conditions

Annex 4 – Breakdown of complaints

Annex 5 – Terms and Conditions