

**GENERAL LICENSING SUB COMMITTEE
13 AUGUST 2024**

Ref: 09/24

ITEM FOR DECISION

APPLICANT:

UBER BRITANNIA LTD

ADDRESS:

**STUDIO 10, YARM ROAD BUISNESS PARK, LINGFIELD
WAY, DARLINGTON, DL1 4QZ**

PURPOSE OF REPORT:

GRANT OF PRIVATE HIRE OPERATORS LICENCE

DATE OF APPLICATION:

22 MAY 2024

COMPANY:

UBER

GRANT OF PRIVATE HIRE OPERATORS LICENCE

Purpose of Report

1. To invite Members to consider a report for the grant of a new Private Hire Operator (PHO) licence outside the scope of Darlington Borough Councils (DBC) Private Hire and Hackney Carriage Licensing Policy.

Application Details

2. On 22 May 2024, Neil McGonigle submitted an application for a PHO licence on behalf of Uber Britannica Ltd (Uber), which is at **Appendix 1**. Uber are registered with Companies House and Neil McGonigle is listed as a Director. The applicant wishes to operate from Studio 10, Yarm Road Business Park, Lingfield way, Darlington, DL1 4QZ, which is in the controlled area of DBC. A map of this location is at **Appendix 2**. This is an application for a five year licence.

Information

3. A private hire operator is defined as: *'a person who in the course of business makes provision for the invitation or acceptance of bookings for private hire vehicles.'*
4. The objective in licensing private hire vehicle operators is to protect the public. They are trusted to safely dispatch drivers and vehicles, so it is important for licensing authorities to be sure that those who are granted a PHO licence pose no threat to the public. Although private hire vehicle operators may not have direct contact with passengers, they are still entrusted to ensure that the vehicles and drivers used to carry passengers are appropriately licensed, which will maintain the safety benefits of the driver/vehicle licensing regime.
5. Case law has established that private hire operators may only dispatch vehicles and drivers that are licenced by the same local authority as the operator. This has become known as the 'triple lock licensing rule' or 'trinity of licences.' It has also been established that the operator can use the vehicles within its organisation for journeys both inside and outside of the local authority in which it is licensed, and can use such vehicles and drivers that ultimately have no connection with the area in which they are licensed. Indeed, Uber are already lawfully taking passengers on journeys within Darlington using the 'trinity of licences' rule.
6. A PHOs licence is granted under section 55, Local Government (Miscellaneous Provisions) Act 1976, and required to enable a person to accept or invite bookings for private hire vehicles. In Darlington, applicants are required to operate from a base within the controlled district of Darlington Borough Council and must comply with regulations and conditions before a licence is granted. Those conditions along with associated legislation are at **Appendix 3**. Subject to the provisions of this Act, a Council shall not grant an operator's licence unless they are satisfied that the applicant is a fit and proper person. If granted, the Council may attach conditions they consider reasonably necessary.

7. The fit and proper test is open-ended and what makes someone fit and proper to hold a licence is not set down by statute. Provided that the test is approached by considering the purpose of the legislation; regulatory compliance and public safety, an authority is free to take into account any factor which they consider goes to the driver's or operator's fitness and propriety (Local Government Lawyer article 2018, Philip Kolvin KC).
8. Unlike hackney carriage and private hire drivers, the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 does not apply to private hire operators. It is not possible to obtain an enhanced Disclosure and Barring Service (DBS) check, however they can be asked to obtain a Basic Disclosure. The applicant along with a fellow director have in fact supplied DBC with an enhanced DBS and no issues were identified.
9. There is no requirement within the Act for a consultation to take place in relation to an application for the grant of private hire vehicle, driver or operator licences.
10. In January 2021 DBC's Private Hire and Hackney Carriage Licensing Policy was implemented following approval by Full Council. Within this policy there is a condition that a private hire operator's licence will not be issued unless the applicant operates from a premises within the borough of Darlington and a fixed landline telephone number for bookings must be provided at the premises. This condition has been within the policy for a number of years and was included as a measure to ensure passenger details were recorded through a legitimate operator in Darlington.
11. Although Uber have a business premises located in Darlington with the appropriate planning permission, they do not have a telephone line for bookings to be made. As this falls outside DBC's policy, the decision to grant a PHO's licence is removed from Officers delegated authority and it is for Members to make a determination.
12. It is acknowledged that technology has now progressed and a fixed line telephone at a local office can be immediately diverted to a contact centre outside DBC's area. Indeed app based technology on hand held devices has removed the need for any direct telephone contact when making a booking, whilst still complying with statutory standards for recording details.
13. To reflect these changes in DBC's policy will require an interim review with full public consultation, which will not be reasonably practicable for this application. A full review of the policy will take place in 2025 and the requirement for a fixed landline telephone will be considered in that review.

Uber

14. Uber is a global company located in more than 10 thousand cities throughout 70 countries. The UK element of their business is based in London with regional Officer's throughout the country to deal with local issues. Their mission statement is at **Appendix 4**.
15. Uber currently hold 68 PHO licences throughout the country. These are listed at **Appendix 5** and five of those licences are in the North East:
 - Newcastle - first issued 2015
 - Sunderland - first issued 2016

- Durham - first issued 2017
- Stockton - first issued 2024
- Middlesbrough - first issued 2024

16. Contrary to recent local media reports, Uber have never applied for a licence in Darlington so we have no licence history to disclose other than that available on open source searches.
17. Over the years Uber has been subject to a great deal of media interest and often misinformation. To be clear, Uber operate within UK licensing framework, with the main difference being that they use app based technology on smart phones, enabling passengers to request their own bookings rather than the passenger calling a private hire operator directly. Once the trip request has been submitted via the app it will be instantly routed to an Uber driver based in their location. Essentially it is an online booking service for private hire vehicles without the need for a centralised booking service. It is also recognised that many other private hire operators are now using app based technology alongside a traditional call centre.
18. DBC's licensing policy provides an option to require sight of an applicant's business plan and any further information as required. Uber have provided information by way of a presentation, which is at **Appendix 6**. This presentation outlines the features of their app and how they operate, along with their complaints procedure.
19. Members may be aware of the high profile Transport for London's (TfL) refusal to renew its licence in September 2017, saying it showed a "lack of corporate responsibility" with "public safety and security implications". Ultimately, to retain its licence and the trust of TfL regulators, Uber had to build a corporate culture fit for its future. This included enhancing governance structures, establishing new communication protocols internally, and with its regulator, create an independent assurance procedure (all making significant changes to Uber's business model). As a result of the changes made within the organisation, Uber maintained its licence with TfL.
20. Members should also be aware that the taxi and private hire trade in London work under a different legislative framework to the rest of the country.
21. A major high profile data breach in 2016 was a factor that led to City of York Council refusing to renew its PHO licence in 2017. Whilst Uber admitted they initially made mistakes in how they handled that incident, they have since made significant changes to how they store data to prevent a recurrence. On 11 June 2024, York's Licensing & Regulatory Committee made a decision to grant Uber a PHO licence ending their hiatus within the city.
22. On request, Uber have provided a list of refused, suspended and revoked licences, which is at **Appendix 7**

Decision

23. Members are aware that they must have regard to the Council's Private Hire and Hackney Carriage Licensing Policy and Procedures.
24. The Council's Licensing Policy advises that in assessing whether the applicant is a fit and proper person to hold a licence, the Council will consider each case on its own merits.

25. In applying these guidelines, the Council will consider its responsibility with regard to safeguarding the public and, in particular, children and vulnerable adults. The Council must be confident that the applicant is a fit and proper person.
26. When determining the fitness and propriety of PHOs, to enable consistent and informed decisions to be made it is important to have a working test, which is:
27. *“Would I be comfortable providing sensitive information such as holiday plans, movements of my family or other information to this person, and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?”* (Institute of Licensing guidance published 2018)
28. If the answer to this question is an unqualified yes, then the test is probably satisfied. If, on the balance of probabilities, Members have doubts then further consideration will be given as to whether the individual/company is a fit and proper person.
29. The Council’s focus is on the impact the applicant has upon members of the public and does not require any consideration of the personal circumstances of the applicant, which are irrelevant.
30. Therefore, the options available for Members are to:

Grant the licence with standard conditions

Grant the licence with standard conditions and any such conditions considered reasonably necessary

Refuse the licence

A licence granted under this section shall remain in force for five years or for such lesser period, specified in the licence, as Members think appropriate in the circumstances of the case.

31. In considering their decision, the Committee should be satisfied that any decision approved by this authority is based on the following factors:
 - It is in line with best practice,
 - It is in the interest of public safety,
 - That the applicant is treated fairly and given an opportunity to discuss the matter,
 - That the decision-making process is clear and transparent.
32. If the applicant is aggrieved by the refusal to grant an operator’s licence or by any conditions attached to the grant of the licence, they may appeal the decision, under Section 55(4) of the Local Government (Miscellaneous Provisions) Act 1976. The appeal must be made to the Magistrates Court within 21 days of the applicant being informed of the decision.
33. An Uber representative has been invited to attend this meeting.

Human Rights Act

34. Article 1 of Protocol 1 of the European Convention of Human Rights confers on individuals (and companies) the Right to Peaceful Enjoyment of their Possessions and the Protection of Property.
35. Once granted, a Licence is a possession.
36. No one can be deprived of his property or have controls put on his property except where the action is permitted by law and justifiable in the public or general interest.
37. When considering matters relating to the grant, revocation, renewal or refusal of licences and the placing of conditions on licences, the Committee must consider whether the decision affects an individual, group or company's Human Rights as set out in the Convention and if it does, whether the interference with those rights is permissible by reason of the justifications set out in the Convention. In addition, consideration must be given to whether interference is proportionate.

Legal Implications

38. There are no issues that the Assistant Director, Law and Governance consider needs to be brought to the specific attention of Members, other than those highlighted in the report.

Crime and Disorder Act 1998 Section 17

39. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Recommendation

40. Members are requested to determine an appropriate course of action in relation to the contents of this report and provide reasons for their decision.

Dave Winstanley
Director of Group Services

APPENDIX 1 Application form from Uber

APPENDIX 2 Map showing Uber business premises location

APPENDIX 3 PHO legislation and conditions

APPENDIX 4 Uber mission statement

APPENDIX 5 Presentation from Uber

APPENDIX 6 List of current Uber licences held in the UK

APPENDIX 7 List of refused, suspended and revoked licence history

