

## **BIRMINGHAM CITY COUNCIL**

### **REPORT OF THE SERVICE DIRECTOR REGULATION AND ENFORCEMENT TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**15 JULY 2015**  
**ALL WARDS**

#### **LICENSING OF ADDITIONAL PRIVATE HIRE OPERATOR SUB-OFFICES**

1. **Summary**

- 1.1 Star Cars & Coaches Ltd, trading as Star Cars have submitted a request via A2Z Licensing (see Appendices 1 and 2), seeking permission to nominate any domestic premises within the Birmingham City Council boundaries as a sub-office, subject to advanced notification to the Licensing Service, in addition to the two addresses currently detailed on their licence.
- 1.2 Star Cars are a private hire operator licensed to operate from 718 Chester Road, Erdington, B23 5TE and from a domestic address in Castle Vale (the existing sub-office).
- 1.3 This is the second request, to add domestic premises to the Star Cars operating licence the first having been agreed on 15 January 2014.

2. **Recommendation**

- 2.1 It is recommended that the request to allow Star Cars to nominate any or all addresses for employees living within the Birmingham City Council boundary, for inclusion on their operator's licence subject to 1 month notice to the Licensing Service be refused, on the understanding Star Cars may apply to have specific individual addresses added to their licence, subject to approval by your Committee.

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### 3. Background

- 3.1 The Local Government (Miscellaneous Provisions) Act 1976, provides a definition for “operate”, which is:

“in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle”.

- 3.2 The issuing of licences for private hire operators falls under Section 55 of the Act, which includes a provision allowing conditions to be attached to the grant of such licences:

“A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary”.

Conditions can only be attached to a licence upon its grant; they cannot be added to a current licence or changed during the term of the licence.

- 3.3 An application form in support of this request has been submitted by Star Cars and no issues have been identified that would present difficulties in processing that application. In order to facilitate consideration of Star Cars request for a mechanism allowing them to introduce additional premises to their licence as required, processing of the renewal application has been delayed and an extension to the existing licence agreed.
- 3.4 If your Committee approves exemptions or the attachment of additional conditions, Star Cars application will be processed and the new licence will be issued with the amended conditions attached.
- 3.5 Star Cars & Coaches Ltd request this matter be dealt with in private (as detailed in the second letter, Appendix 2). However, as the request relates to the principal of allowing additional addresses to be added to the operator’s licence and is not at this point considering individual private residences, legal advice suggests this matter should be heard in public.

### 4 Licensing Additional Sub-Offices

- 4.1 The case for a mechanism which would allow nomination of any domestic address in Birmingham for inclusion as a sub-office on the Star Cars licence is laid out in the letter attached at appendix 2. The argument hinges on the requirements of the Employment Rights Act 1996 and subsequent amendments which allow employees to request flexible work arrangements, including the right to ask to work from home. Star Cars supplied two ACAS documents in support of their application with appendix 2. Copies of these two documents can be viewed on line as follows:

The Right to Request Flexible Working: An ACAS Guide:

<http://www.acas.org.uk/media/pdf/1/a/The-right-to-request-flexible-working-the-Acas-guide.pdf>

Homeworking – A Guide for Employers and Employees:

<http://www.acas.org.uk/media/pdf/o/3/Homeworking-a-guide-for-employers-and-employees.pdf>

- 4.2 Star Cars contend the decision to allow one employee to work from home leaves them in a position where they could face legal action if they are not able to offer the same arrangement to all employees requesting home working.
- 4.3 Officers have sought legal advice and accept the principle Star Cars must consider applications for flexible and home working, but do not accept that the responsibilities placed on the employer to do so places a similar responsibility on Birmingham City Council in the role of Licensing Authority. The very fact an address does not have the appropriate licence would prevent home working in a context where a licence was required, unless and until such time as a licence was granted for the address in question.

- 4.4 The proposal submitted on behalf of Star Cars is as follows:

*Mrs Jackie Markham (the licensed operator) be permitted to operate from any domestic premises in the city, subject to giving at least one calendar months' notice to Hackney Carriage & Private Hire Licensing of her intention to permit a member of her staff to operate (invite and accept bookings for a private hire vehicle) from any such domestic address.*

*A list of all such domestic addresses notified to Hackney Carriage & Private Hire Licensing from which staff may operate (invite and accept bookings for a private hire vehicle) shall be kept at the main office (718 Chester Road, Erdington, Birmingham B23 5TE) and made available to a constable or an authorised officer on request.*

*Within 24 hours of ceasing to operate from any such domestic address, the operator shall advise Hackney carriage and Private Hire Licensing of this in writing and update the list maintained at the main office.*

- 4.5 The proposal detailed above would serve to allow additional addresses to be added to or removed from the licence without the necessity of issuing a new licence after each amendment. This would also have the effect of allowing the operator to make adjustments at will without incurring any additional costs, subject to compliance with the notification requirements.
- 4.6 Ultimately the Licensing Service and this Committee are responsible for looking after the interests of the public and in particular the passengers using hackney carriage and private hire vehicles. It should be noted adoption of the proposal would remove any formal process of approval of sub-offices by the Licensing Service, or your Committee and leave responsibility for deciding if premises were suitable in the hands of the operator. Ultimate responsibility for licences issued would still lie with Birmingham City Council and the decision to allow an operator to nominate sub-offices at will, could be difficult

to justify in the event complaints were received about a sub-office, especially if those complaints called into question the suitability of the premises, or the individual operating there.

- 4.7 A list of addresses was provided for inclusion with the original application, however, no individual case was made in respect of any of the addresses, or individuals concerned. Officers have clarified the request with Star Cars representative and confirmed Star Cars wish their request to allow licensing of any domestic address in Birmingham to be considered by your Committee, in preference to the list of individual addresses as referred to in the original letter (appendix 1).
- 4.8 The decision to allow licensing of the original sub-office was made after application to Committee and took into account a specific set of circumstances put forward in support of that request. Addition of the sub-office address to the licence was also subject to the imposition of additional conditions as detailed below:

### **Sub Office**

The Private Hire Operators Licence will stipulate a Principal Office and the details of any Sub Office(s) from where private hire vehicles may be operated.

**58.** Except for any matters referred to within this section (conditions 58-65), the standard Private Hire Operators Conditions of Licence will be applicable to and must be complied with, at all licensed premises specified on the licence.

**59.** All records referred to in the standard Private Hire Operators Conditions of Licence, with the exception of those pertaining to Records of Bookings (see conditions 38-43), must be retained and made available for inspection at the Principal Office. Records of Bookings will be maintained in compliance with conditions 38-43 at all licensed premises specified on the licence.

**60.** You must ensure that at all times, the Principal Office is able to identify and immediately disclose when the Sub Office is open and/or operating.

**61.** You must ensure that at all times when the Sub Office is open for business there is an appropriate and permanent communication system at that office to communicate directly with the Principal Office.

**62.** You must ensure that all bookings taken at the Sub Office shall be recorded upon the same computerised record system as that maintained and used at the Principal Office and in accordance with conditions 38-43.

**63.** Any authorised officer of the Council shall be afforded access to the Sub Office at all times whilst the office is open and/or operating or within 15 minutes of it ceasing to take bookings.

**64.** You must notify the Licensing Office in writing and within 3 days of any change in the nature of the operation at the Sub Office.

**65.** The Sub Office may only operate whilst and when the Principal Office is open and operating.

**66.** You must not promote the location of the sub-office in any advertising or promotional material.

**67.** You must not permit any Star Cars licensed private hire vehicles to park at or in the vicinity of the Sub Office.

4.9 The principle of allowing remote operation from a domestic address was established when Star Cars' application to licence such a premises in Castle Vale was approved. Officers have sought legal advice and consulted with the licensing Enforcement Team. Reservations were expressed about the difficulties which may arise should there be a need to inspect or visit what is essentially a domestic dwelling. However, the fundamental issue remains the risk associated with delegating responsibility for decisions as to which premises are suitable for licensing to an operator, when responsibility for regulating that operator and any associated sub-offices lies with the Licensing Service and your Committee.

4.10 It is suggested further requests to add additional domestic addresses to the operator's licence issued to Star Cars should be subject to the same process and considered individually and according to the merits of each case. This would allow members to ask questions about the individual premises and ascertain the employee understands the implications of the additional conditions where applicable and is willing to comply with them. It would also allow members the opportunity to impose further conditions if considered necessary.

## 5. Consultation

5.1 No external consultation has been carried out as this is a specific request from an individual applicant.

## 6. Implications for Resources

6.1 This work will be undertaken within the resources available to your Committee.

## 7. Implications for Policy Priorities

7.1 No specific implications have been identified.

8. Implications for Equality and Diversity

8.1 No specific implications have been identified.

**SERVICE DIRECTOR REGULATION AND ENFORCEMENT**

Background Papers: Nil