

Gloucester City Council

Committee	: LICENSING AND ENFORCEMENT COMMITTEE
Date	: 19 JULY 2011
Subject	: APPLICATION FOR A PRIVATE HIRE VEHICLE LICENCE BY MR MOHAMMED SANNEH UNDER SECTION 48 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976
Ward	: ALL
Report by	: GROUP MANAGER, ENVIRONMENTAL HEALTH & REGULATORY SERVICES
No. of Appendices	: A: EXTRACT FROM PRIVATE HIRE RULE BOOK JUNE 2010 ENTITLED 'VEHICLE AGE AND TESTING' B: COPY OF V5 NEW KEEPERS SUPPLEMENT C: COPY OF APPLICATION FROM MR SANNEH D: COPY OF LETTER FROM MR SANNEH DATED 14 JUNE 2011 E: COPY OF LETTER FROM FOOD SAFETY AND LICENSING SERVICE MANAGER DATED 16 JUNE 2011 F: COPY OF LETTER FROM MR SANNEH DATED 27 JUNE 2011
Reference No.	: ES21116

1.0 Purpose of Report

- 1.1 To outline to Members an appeal by Mr Mohammed Sanneh against an Officer decision to refuse to issue a private hire vehicle licence to vehicle BMW 525 registration number SB06 BKD on the grounds that it does not meet the age specification required by the Council's vehicle licensing conditions.

2.0 Recommendations

- 2.1 Having considered the application, the Council's licensing conditions and Mr Sanneh's submissions, Members have the following options:
- (a) To refuse the application on the grounds that the vehicle does not meet the criteria for licensing due to its age.
 - (b) To accept the application on the grounds that the vehicle is of such a high standard for its age that the relevant condition should be waived in this particular case.

3.0 Background

3.1 The City Council has statutory power under the Local Government (Miscellaneous Provisions) Act 1976 to licence private hire vehicles and may apply conditions to the issue of such licences.

3.2 The current conditions now contained in the 'Private Hire Rule Book' were approved by Members at their meeting on 19 January 2010 and came into force on 01 June 2010.

3.3 One condition concerns the age of private hire vehicles at the first time of licensing (Appendix A Extract from Private Hire Rule Book) and states :-

- **Vehicles must comply with the following conditions in relation to age and service:**

- a. **vehicles will not be accepted for licensing on the first occasion after 5 years from the date of first registration regardless of whether it was previously licensed anywhere else in the UK, or re-licensed after 10 years from the date of first registration.**

3.4 An earlier edition (May 2003) of the Council's General Conditions for Hackney Carriage and Private Hire Licensing contained the wording '**will not normally be accepted**' in place of the above thus allowing for Officer and Member discretion when deciding the merits of a particular case.

4.0 Information

4.1 Mr Mohammed Sanneh has been a licensed Private Hire Driver since 06/12/2004 driving for Private Hire Operator 'Cloud Nine Limos'.

4.2 He had been driving Private Hire Vehicle PHV 259 a Mercedes C220 until it was involved in an accident in March 2011 and was subsequently written off by the insurance company.

4.3 To replace this vehicle Mr Sanneh has acquired a BMW 525D M Sport Auto registration number SB06 BKD on 27/05/2011. The vehicle was purchased privately and the current mileage is 69,000.

4.4 The vehicle was first registered with the DVLA on 19/05/2006. (Appendix B V5 New Keepers Supplement)

4.5 Mr Sanneh's application to licence the above vehicle was signed and received by the Licensing Team on 10/06/2011 (Appendix C Vehicle Licence Application). The vehicle therefore failed to meet, by 24 days, the specific condition relating to age and a vehicles acceptance for licensing on the first occasion and Mr Sanneh was advised accordingly.

- 4.6 Mr Sanneh wrote to Lisa Wilkes, Food Safety and Licensing Service Manager on 14/06/2011 (Appendix D Letter from Mr Sanneh) where he explains his misunderstanding of the condition relating to the '5 year rule' in that he thought the year ran from January to January. He also goes on to give examples of additional work he has undertaken to the vehicle to make it fit for the purpose of carrying fare paying passengers.
- 4.7 Lisa Wilkes wrote to Mr Sanneh on 16/06/2011 (Appendix E Letter from Lisa Wilkes) further explaining how the age policy works in practice and giving Mr Sanneh the option of either purchasing a vehicle which meets our conditions or appealing directly to the Licensing and Enforcement Committee.
- 4.8 Mr Sanneh's letter dated 27/06/2011 (Appendix F Letter from Mr Sanneh) confirmed that he wanted the matter considered by this Committee.
- 4.9 The vehicle was inspected by a Licensing Officer at the Council's Offices on 06/07/2011 and found to meet all other licensing requirements.
- 4.10 It is intended to make the vehicle available for inspection by Members during the Committee Meeting in order that they may make a first-hand appraisal of its suitability for licensing or otherwise.

5.0 Conclusions

- 5.1 I would refer Members to the options at 2.1(a) and (b) of this report.
- 5.2 As Members made the decision to adopt the age policy in the first place they have the power to depart from this policy if they think that this is an exceptional case and that the vehicle is perfectly suitable for licensing at this time.
- 5.3 It should be borne in mind that the only sensible reason for this age policy is in order to maintain the standards of the licensed vehicle fleet and that furthermore, once licensed, a vehicle may continue to be licensed up to the age of 10 years old (Appendix A Extract from Private Hire Rule Book).
- 5.4 One further point to consider is that the existing wording of the age condition does not allow for any leeway and the Council could be seen to be inflexible (fettering its discretion) in this respect and as such could be leaving itself open to a legal challenge. Members may wish to consider changing the wording of this condition now or at sometime in the future. This may go some way in preventing the allegation that the Council is being inflexible and ensure that the Council's Policy guides but does not bind the Council so that each case may always be judged 'on its own merits'.

Members might like to note that in the case of R. V. Hyndburn Borough Council ex parte Rauf and Kasim in the High Court in 1992, it was held that provided the policy is just that, and not an immutable rule, it is possible to have strict age limits. The opportunity to depart from a policy must still be afforded if circumstances warrant it and each application must still be treated on its merits.

6.0 Financial Implications

6.1 There are no financial implications relating to this report.

7.0 Legal Implications

7.1 There have been a number of legal cases regarding the appropriateness of conditions that purport to restrict the age of vehicles for licensing.

7.2 The majority of the legal implications are covered in the body of the report.

7.3 It is lawful for the Council to impose a condition that no licence would be issued to a vehicle over a certain age, but on any application the Council must consider it on merit, to see if the vehicle meets the Council objectives behind the age restriction. The objectives should include such matters as safety, reliability and comfort.

7.4 In making its decision, the Committee needs to give full reasons that are linked to the reasoning behind the age restriction.

7.5 There is a right of appeal against a refusal to grant a Private Hire Vehicle Licence to the Magistrates' Court.

8.0 Risk Management Implications

8.1 The risk of an appeal to Magistrates should an inappropriate or unreasonable decision be made *and the potential for a financial penalty to be incurred*.

9.1 People Impact Assessment (PIA)

9.1 PIA is not required for such Private Hire cases as there are no adverse impacts or any risks to customers in the areas of gender, disability, age, ethnicity, religion, sexual orientation or community cohesion.

Any Further Relevant Information

None

10.0 Other Corporate Implications

10.1 None

Background Papers : Gloucester City Council Licensing Hearing Procedure

Published Papers : The Local Government (Miscellaneous Provisions) Act 1976
Gloucester City Council's Private Hire Rule Book

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