

Gloucester City Council

Committee	: LICENSING AND ENFORCEMENT COMMITTEE
Date	: 13 DECEMBER 2011
Subject	: APPLICATION FOR A PRIVATE HIRE VEHICLE LICENCE BY MR ADERITO QUEIROS BALDE 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 APPLICATION PAPERWORK C: LETTER FROM APPLICANT IN SUPPORT OF APPLICATION
Reference No.	: ES21126

1.0 Purpose of Report

- 1.1 To outline to Members an application by Mr Aderito Queiros Balde for a new Private Hire vehicle licence for a Chrysler Grand Voyager registration number DV55 ZPM. The application is before the committee on the grounds that it does not meet the age specification required by the Council's policy on the age of vehicles.

2.0 Recommendations

- 2.1 Having considered the application, Council policy and Mr Balde's submissions, Members have the following options:
- (a) To refuse the application on the grounds that the vehicle falls outside of Council policy on the age of vehicles that can be accepted for licensing on the first occasion.
 - (b) To accept the application on the grounds that the vehicle is of such a high standard for its age that Council policy should be departed from 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. The Council is able to adopt a policy in relation to the licensing of private hire vehicles and is able to attach conditions to the grant of such licences.
- 3.2 Private hire vehicles are licensed under section 48 of the above Act, which states:

"48 Licensing of private hire vehicles.

(1) Subject to the provisions of this Part of this Act, a district council may on the receipt of an application from the proprietor of any vehicle for the grant in

*respect of such vehicle of a licence to use the vehicle as a private hire vehicle,
grant in respect thereof a vehicle licence:*

Provided that a district council shall not grant such a licence unless they are satisfied—

(a) that the vehicle is—

- (i) suitable in type, size and design for use as a private hire vehicle;*
- (ii) not of such design and appearance as to lead any person to believe that the vehicle is a hackney carriage;*
- (iii) in a suitable mechanical condition;*
- (iv) safe; and*
- (v) comfortable;*

(b) that there is in force in relation to the use of the vehicle a policy of insurance or such security as complies with the requirements of [F1Part VI of the Road Traffic Act 1988],

and shall not refuse such a licence for the purpose of limiting the number of vehicles in respect of which such licences are granted by the council.”

3.3 Current Council policy and conditions are contained in the Private Hire Rule Book which was approved by Members at their meeting on 19 January 2010 and came into force on 01 June 2010.

3.4 The current policy includes a requirement in relation to the age of a vehicle at the first time of licensing (**Appendix A** Extract from Private Hire Rule Book) and states:-

“3.22 Vehicles must comply with the following conditions in relation to age and length of 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.”*

3.5 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 Balde is currently a licensed Private Hire driver with Gloucester City Council, he has held a licence since 6 February 2008, he is also the proprietor of a licensed Private Hire vehicle, a wheelchair accessible Peugeot Expert plate number 106 (PHV106) with an expiry date of 19 February 2012.

4.3 Mr Balde submitted a request to licence an additional Private Hire vehicle which was received on 7 November 2011. All relevant paperwork is attached at **Appendix B**. From receipt of the initial request the vehicle failed to meet the Council age policy by nine months and six days.

- 4.4 Mr Balde's letter at **Appendix C** details his justification for the Council to depart from its age policy. Mr Balde states that his vehicle is in excellent condition, and that many of his clients require a 6 seater vehicle of this calibre because it is of a bespoke design and not a converted van with 7 seats. The vehicle has had 3 former keepers, it had 110,533 miles on the clock at the time it passed a Council approved vehicle inspection on 7 November 2011. The vehicle has a current MoT.
- 4.5 The vehicle will be available for inspection by Members during the Committee meeting in order that they may make a first-hand appraisal of it's suitability for licensing.
- 4.6 With the exception of a certificate of insurance for hire and reward Mr Balde has supplied all necessary documentation required. Should the Committee be minded to approve the application a valid certificate of insurance would be required before the grant of the licence in order to comply with s48(1)(b) of the 1976 Act.

5.0 Conclusions

- 5.1 Members are referred to the options at 2.1(a) and (b) of this report.
- 5.2 Following the case of *R v Hyndburn Borough Council, ex parte Rauf and Kasim* (12 Feb 1992, QBD, unreported) it is possible to have a policy in relation to the age of vehicles. However the policy cannot be an immutable rule, and as such the Council cannot fetter its discretion by rigidly following the policy without treating each case on its merits.
- 5.3 The current age policy was adopted by Members. As such the Committee has the power to depart from the policy if the application is considered to be an exceptional case and that the vehicle meets the criteria for licensing.
- 5.4 It should be borne in mind that the justification behind the 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).
- 5.5 Should Members be satisfied that all criteria specified in s48(1) of the 1976 Act are met, then the only justification for refusing the application is on the grounds that the vehicle does not comply with the current Council policy.
- 5.6 If Members decide to depart from the policy in this instance, considered reasons will be required in order to show the justification for departing from the policy. Members should note that any decision to depart from the policy will set a precedent when considering any future applications. While any future applications would need to be considered on their own merits, if future cases could not be distinguished from this application then the rationale followed in this case would need to be applied.
- 5.7 Should Members decide to follow Council policy and refuse the application considered reasons will also have to be given.

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 policy 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
Person to Contact	:	Rebecca Tuck, Licensing & Enforcement Officer Tel: 396678 E-mail: Rebecca.Tuck@gloucester.gov.uk