

Gloucester City Council

Meeting:	Licensing and Enforcement Committee	Date:	19th March 2013
Subject:	Application for a Private Hire vehicle by Mr S Green under Section 48 of the local Government (Miscellaneous Provisions) Act 1976		
Report Of:	Corporate Director for Services and Neighbourhoods		
Wards Affected:	All		
Key Decision:	Yes	Budget/Policy Framework:	Yes
Contact Officer:	Lisa Jones, Food and Licensing Service Manager		
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Appendices:	A: Proposed Change in wording to Conditions for Door Recognised Panels.		
	B: Photographs showing BMW 730 LD SE and alternative door panel		
	C: Copy of application paperwork		
	D: E-Mail from Mr Green requesting exemption to be considered.		
	E: Extract from Department for Transport Guidance on vehicle identification		

FOR GENERAL RELEASE

1.0 Purpose of Report

- 1.1 To outline to Members an application by Mr S Green for a new private hire vehicle licence for a BMW 730 LD SE registration number YK12 RXH. The application is before the Committee on the grounds that it does not meet the specification required by the Council's policy on Door Panels.

2.0 Recommendations

- 2.1 Licensing and Enforcement Committee is asked to **RESOLVE** that having considered the application, Council policy and Mr Green's submission, the following options:

- (a) To refuse the application on the grounds that the vehicle falls outside of Council policy on the Door Panels that can be accepted for licensing, in that it

does not meet the Committees objectives behind the imposition of this particular condition.

OR

- (b) To accept the application on the grounds that the vehicle is of such a high specification that Council policy should be departed from in this particular case.

AND

- (c) To agree in principle to change the existing policy wording around door panels, to accommodate vehicles that are manufactured with fibre glass or aluminium doors.

3.0 Background and Key Issues

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 Part 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 1 June 2010.

3.4 The current policy includes a requirement in relation to the age of a vehicle at the first time of licensing and states:-

*“3.43 Door Panels must be displayed on **both front doors** of a Private Hire vehicle and must be to a minimum size of 0.61m² (2ft²) and must be rectangular in shape. They must be approved by the Licensing Officer prior to display and shall be printed with black lettering on a yellow background.*

3.44 The following information must be provided on the panel: -

City of Gloucester

[Company Trade Name] Private Hire

Pre-Bookings Only

[Telephone]

Private Hire Licence no.....

With the words in 'square' brackets above to be optional.

As a guideline, the minimum font size of the mandatory wording on the door panel is 30mm.

3.5 An earlier edition (May 2003) of the Council's General Conditions for Hackney Carriage and Private Hire Licensing contained the wording “*all private hire vehicles may display on both front doors the approved recognition panel...the maximum size of the door recognition panel shall be 0.61sq. metres (two square feet) and shall be rectangular in shape..*” in place. This version did not specify a minimum size, only a maximum size which is now reflected as the minimum size in the current rule books.

3.6 The change in wording from ‘may’ to ‘must’ on the display of door recognition panels followed a change in policy at the Licensing and Enforcement Committee in January 2010, which no longer allowed roof signs on private hire vehicles.

3.7 Members should note that the current condition wording dated June 2010 refers to door panels being a minimum size of (2ft²) which should actually be reflected as (2sq.ft). However, whilst this should be corrected, some drivers have found difficulties in meeting the minimum size on some vehicles that have different shape doors, particularly where the door itself has a raised crease across the middle of the door. This issue has been raised by a number of operators because the crease can raise the magnetic panel away from the door, making it susceptible to being blown off in the wind.

3.8 **Appendix A** reflects a proposed change in wording to this policy document and Members are asked to agree in principle to this change. This change focuses on

the minimum standard being the mandatory wording as opposed to the size of the panels and overall positioning.

- 3.9 Mr Green has been a licensed Private Hire Driver since 13.02.2002. He works for RJL Gloucester Limited T/A Andy Cars, Eastgate Street, Gloucester and specialises in chauffeur executive work as well as other private hire work.
- 3.10 The BMW 730 LD SE (**Appendix B** Photographs showing BMW 730 LD SE) was first registered with the DVLA on 24th May 2012 making it less than a year old since registration. The current mileage is approximately 2,200.
- 3.11 Mr Green submitted a request to licence the vehicle which was received on 11th February 2013. All relevant paperwork is attached at **Appendix C**.
- 3.12 The vehicle will be available for inspection by Members during and before the Committee meeting in order that they may make a first-hand appraisal of it's suitability for licensing.

4.0 Alternative Options Considered

- 4.1 The car is an executive vehicle, less than one year old and because of its guarantee the owner does not want to apply stickers to the doors because this will leave some marking. There is another option which is to 'wrap' the doors and again the owner does not want to do this as he is concerned about it marking and affecting his bodywork guarantee. Wrapping' will also prevent him from removing the signs to carry out his executive work.
- 4.2 There is debate over the way in which these signs should be attached to the vehicle. They can either be adhesive and fixed permanently to the paintwork, or magnetic and be capable of being removed. The magnetic ones are claimed to damage the paintwork of the car much less than the adhesive versions, which leave a discoloured mark on removal if they are attached for a long time. There is a compelling argument against permanently fixed panels to avoid discoloration of the paintwork, and the consequent loss in the vehicles' resale value. Additionally, magnetic panels are at risk of theft because they can be easily removed from the vehicle.
- 4.3 Mr Green has suggested another option which is to have magnetic panels made up as big as possible to be placed on the rear wings over the wheel arches, overlapping the petrol cap (see **Appendix B**). The rear wings of the vehicle are metallic and allow magnetic signs to be used. These proposed panels are clearly identifiable and also meet the minimum font size of the mandatory wording in the current policy, although not in the specific manner i.e. overall size and positioning on car.

5.0 Reasons for Recommendations

- 5.1 The BMW 730 LD SE has side doors made of fibre-glass, therefore the widely used 'magnetic' type door panels cannot be used. This report seeks Members approval to use magnetic door panels that do not meet the current policy specification in relation to door panels being 'displayed on both front doors' and meeting the minimum overall size requirement.
- 5.2 Due to the urgency of this matter, Mr Green has been granted temporary permission to trial these new plates under delegated power of the Group Manager for Environmental Health, as laid out on page 3 – 63 at F 2 of Part 3 of the Council Constitution under "All urgent, sensitive and contentious licensing and enforcement matters in consultation with the Director of Services and Neighbourhoods and the Chair and Vice Chair and Spokes Persons of Licensing and Enforcement Committee." This temporary permission was given on the proviso that this matter will be brought before the Licensing and Enforcement Committee for full approval.
- 5.3 Mr Green's email at **Appendix D** details his justification for the Council to depart from its policy.
- 5.4 Under Officer delegated powers Mr Green's Private Hire Operator has also been granted an exemption to display the Licence plates and associated signage which include door panels for this vehicle during journeys of contracted executive/chauffeur work. Mr Green also carries out normal private hire work because his executive work is somewhat limited; it is during these journeys that he must display door panels to comply with the Council's Policy.
- 5.5 A private hire vehicle is always a private hire vehicle, and as such, it can be argued that they should not need to remove identification signs whilst licensed. Equally they are working vehicles, and the costs associated with their use, including depreciation, must be taken into account and balanced against the risks of using other versions. To date there is no high court decision on door panel conditions, but the principle goes back to at least 1992 and the High Court case of R v Hyndburn Borough Council.
- 5.6 Members should be aware that more new vehicles are being produced with fibreglass or aluminium doors, due to the light weight properties of these materials. For that reason, the Council can expect further difficulties in the future with new vehicles meeting our current conditions because they will not be able to use magnetic signs on those doors.

6.0 Future Work and Conclusions

- 6.1 Members are referred to the options at 2.1(a), (b) and (c) of this report.
- 6.2 Following the case of *Oakview Kars v Basingstoke and Deane Council, Crown Court decision* it is possible to have a policy in relation to the use of door panels

on licensed vehicles. However the policy cannot be an irreversible rule, and as such the Council cannot restrict its discretion by rigidly following the policy without treating each case on its merits.

- 6.3 The Oakview Kars case follows the principle set out in the 1992 High Court case of R v Hyndburn Borough Council relating to a condition specifying a minimum age for licenced vehicles. It was held that provided the policy is just that, and not an unchangeable 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.
- 6.4 The current door panel 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.
- 6.5 It should be borne in mind that the justification behind the door panel policy is to ensure the Gloucester City private hire licensed fleet can be easily identified by members of the public to maintain clear differentiation from a taxi. This followed a change in policy at the Licensing and Enforcement Committee in January 2010, which no longer allowed roof signs on private hire vehicles. An extract from the Department for Transport: Taxi and private hire vehicle licensing on vehicle identification can be found in **Appendix E**.
- 6.6 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.
- 6.7 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.
- 6.8 Should Members decide to follow Council policy and refuse the application considered reasons will also have to be given.

7.0 Financial Implications

- 7.1 There are no financial implications relating to this report.

(Financial Services have been consulted in the preparation this report.)

8.0 Legal Implications

- 8.1 There have been a number of legal cases regarding the appropriateness of conditions on vehicles for licensing. The most notable case relating to door panels is referred to in paragraph 5.2 of the report.
- 8.2 It is lawful for the Council to impose a policy that no licence would be issued to a vehicle that does not comply with the policy, but on any application the Council must consider it on merit, to see if the vehicle meets the Council objectives behind the door panel requirement.
- 8.3 In making its decision, the Committee needs to give full reasons that are linked to the reasoning behind the door panel identification.
- 8.4 There is a right of appeal against a refusal to grant a Private Hire Vehicle Licence to the Magistrates' Court.

(Legal Services have been consulted in the preparation this report.)

9.0 Risk & Opportunity Management Implications

- 9.1 The risk of an appeal to Magistrates should an inappropriate or unreasonable decision be made and the potential for a financial penalty in costs awarded to be incurred.

10.0 People Impact Assessment (PIA):

- 10.1 The Screen stage considered risks to customers in the areas of gender, disability, age, ethnicity, religion, sexual orientation or community cohesion.
- 10.2 The PIA screening stage was completed and did not identify any potential or actual negative impact, therefore, a full PIA was not required.

11.0 Other Corporate Implications

Community Safety

- 11.1 None

Sustainability

- 11.2 None

Staffing & Trade Union

- 11.3 None

Background Documents:

Gloucester City Council Licensing Hearing Procedure

The Local Government (Miscellaneous Provisions) Act 1976

Gloucester City Council's Private Hire Rule Book (June 2010)

Department for Transport: Taxi and private hire vehicle licensing: best practice guidance (March 2010)

Oakview Kars v Basingstoke and Deane Council, (Crown Court decision)