

Gloucester City Council

Meeting:	Special Licensing and Enforcement Committee	Date:	9 August 2016
Subject:	Application for a Private Hire Vehicle Licence by Rubina Patel under section 48 of the Local Government (Miscellaneous Provisions) Act 1976		
Report Of:	Gill Ragon – Head of Public Protection		
Wards Affected:	All		
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Appendices:	1. Copy of application from Rubina Patel		
	2. Refusal Letter		
	3. Appeal letter from Rubina Patel		
	4. Extract from Private Hire Driver and Vehicle Rule Book June 2013 entitled ‘Vehicle age and Testing’		

FOR GENERAL RELEASE

1.0 Purpose of Report

- 1.1 To consider an application by Rubina Patel for a Private Hire Vehicle licence for a Peugeot 3008 registration number KY11 YHR. 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 Recommendation

- 2.1 Having considered the application, Council Policy and Rubina Patel’s submission, members have the following options:
- (a) To refuse the application on the grounds that the vehicle falls outside of the Council’s Private Hire Vehicle 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 a high standard for its age and that the Council’s Private Hire Vehicle 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:

(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 an appearance as lead any persons 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 numbers of vehicles in respect of which such licences are granted by the Council”.

3.3 The current Council policy and conditions are contained in the Private Hire Driver and Vehicle Rule Book which was approved by members and came into force on 18th June 2013.

3.4 The current policy includes a requirement in relation to the age of a vehicle at the first time of licensing (**Appendix 4**) as states:-

“3.32 Vehicles must comply with the following conditions in relation to age and length of service:

A. Vehicles will not normally be accepted for licensing on the first occasion after 5 years from the date of the first registration regardless of whether is was previously licensed anywhere else in the UK”.

4.0 Information

- 4.1 Rubina Patel is currently a licensed Private hire driver with Gloucester City Council, she has held a licence since 22nd September 2014. Rubina is also the proprietor of a licensed Private Hire Vehicle, a Mercedes C220 with plate number 391 (PHV391) with an expiry date of 30 September 2016.
- 4.2 Rubina Patel has part exchanged the above Mercedes and took ownership of a Peugeot 3008, registration number KY11 YHR.
- 4.3 On 19th July 2016, Rubina Patel submitted a request to the Licensing Authority for a Private Hire Vehicle Licence. On the date of receipt of the paperwork, the vehicle failed to meet the Council's age policy by 4 months and 15 days. All relevant paperwork can be seen attached as **Appendix 1**.
- 4.4 On the 21st July 2016, Mrs. Patel was emailed a refusal letter outlining why the Licensing Authority, at this time, would not be issuing the Private Hire Vehicle Licence. A copy of this letter can be seen in **Appendix 2**.
- 4.5 Rubina Patel submitted an appeal letter to the Licensing Authority. The letter contains justification for the Council to depart from its age policy. A copy of the appeal letter can be seen in **Appendix 3**.
- 4.6 The vehicle will be available for inspection by Members during the Committee meeting in order that they may make a first-hand appraisal of its suitability for licensing.

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 as noted in **Appendix 4**.
- 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.

6.0 Financial Implications

6.1 There are no direct financial implications associated with 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 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 each case on its merits, 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 within 21 days of the decision being notified.

7.0 Risk & Opportunity Management Implications

7.1 There is a right of appeal to the Magistrates Court should an inappropriate or unreasonable decision be made and the potential for costs to be awarded against the Council on successful appeal if the Council has not acted reasonably.

8.0 People Impact Assessment (PIA):

8.1 The Screening Stage considered risks to licence holders in the areas of gender, disability, age, ethnicity, religion, sexual orientation or community cohesion.

8.2 The PIA Screening Stage was completed and did not identify any potential or actual negative impact, therefore a full PIA was not required.

9.0 Other Corporate Implications

Community Safety

9.1 None at this stage

Sustainability

9.2 None at this stage

Staffing & Trade Union

9.3 None at this stage

Background Papers : Gloucester City Council Licensing Hearing Procedure

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