

Cheltenham Borough Council

Licensing Committee – 5 September 2014

Application for a Hackney Carriage Vehicle Licence

Mr Aditya Rai

Report of Licensing & Business Support Team Leader

1. Summary and Recommendation

- 1.1 An application for a Hackney Carriage vehicle licence was submitted by Mr Aditya Rai on the 14 August 2014.
- 1.2 The application is to license a Peugeot E7 with registration SC57 UJF.
- 1.3 Mr Rai failed to renew his vehicle licence on time and he has now made a new application to licence the vehicle. The vehicle is older than the maximum permitted age limit of 5 years from date of manufacture and as a consequence the application is being referred to the Licensing Committee to determine.

1.4 The Committee is recommended to resolve that:

- 1.4.1 **The application be granted because the Committee considers there to be sufficient grounds to deviate from the adopted policy; or**
- 1.4.2 **The application be refused because the vehicle does not comply with the Council's adopted policy.**

1.5 Summary of implications

1.5.1 Financial

Contact officer: Sarah Didcote
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 26 4125

1.5.2 Legal

The Council has an agreed and adopted a policy that details the standards that are required in respect of new and existing Hackney Carriage Vehicles. The Council can depart from its own policy where there are reasonable grounds to do so.

Contact officer: Vikki Fennell
E-mail: vikki.fennell@tewkesbury.gov.uk
Tel no: 01684 27 2015

2. Background

- 2.1 Mr Rai's vehicle has previously been licenced (HCV207). The licence expired on 8 August 2014 and Mr Rai failed to submit his renewal application before the expiry date.

- 2.2 In law, the Council has very limited discretion to agree to the renewal of a licence that has already expired. Direction in this matter was given in the case of *Exeter City Council v Sandle* [2011] EWHC 1403 (Admin) where the High Court stated, in essence, that local authorities could renew an expired licence but only where there were exceptional circumstances applicable and where there has not been a significant amount of time that has elapsed since the expiry of the licence.
- 2.3 In Mr Rai's case, the Licensing & Business Support Team Leader, having considered the facts, decided not to renew his expired licence. Mr Rai was notified of the decision in writing and the reasons for the decision. A copy of the aforementioned is attached at **Appendix A** for the Committee's information.

3. Policy Considerations

- 3.1 The Council's adopted Licensing Policy, Guidance and Conditions for Private Hire and Taxis Operating within the Borough of Cheltenham was adopted on the 3rd of September 2010 and came into effect on the 1st of December 2010. Sections of that policy were amended and the amendments were adopted on the 13th May 2011.
- 3.2 The aim of the licensing process, in the context of the policy, is to regulate the Hackney Carriage and Private Hire trade in order to promote the below objectives.
- 3.3 In setting out its policy, the Council seeks to promote the following objectives:-
- a) The protection of the public;
 - b) The establishment of a professional and respected Hackney Carriage and Private Hire trade;
 - c) Access to an efficient and effective public transport service;
 - d) The protection of the environment.
- 3.4 The Policy will apply in respect of applications, renewals, reviews and transfers in relation to the following licences:-
- a) Private Hire vehicle;
 - b) Private Hire driver;
 - c) Private Hire operator;
 - d) Hackney Carriage driver; and
 - e) Hackney Carriage proprietor.

Vehicles

3.5 Vehicle standards for all new licences issued for Private Hire Vehicles

- a) *Maximum age limit of 5 years old at date of manufacture;*
- b) Minimum interior dimensions to ensure ease and comfort of passengers.

4. Licensing Comments

- 4.1 This application must be determined on its merits as a new licence application regardless of the fact that the vehicle was licenced previously.
- 4.2 Members are to note that the vehicle has passed all the relevant assessments and is a disabled access vehicle.
- 4.3 Mr Aditya Rai has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.

- 4.4 Although the Committee can deviate from its own adopted policy, it should only do so where there are strong and defensible reasons for doing so

Background Papers

Service Records

Contact Officer

Louis Krog
01242 775004
licensing@cheltenham.gov.uk

Appendix A (Email sent Friday 08/08/2014)

Mr Rai,

Thank you for your email.

I have reviewed your case and the circumstances relating to your failure to renew your licence in time.

For the avoidance of doubt, the Council has discretion to renew an expired licence but only in cases where 1) there are extraordinary circumstances and 2) where a short time has elapsed since the expiry of the licence.

In your case, I have taken into account the following in coming to a decision:

1. The time that has elapsed between the expiry of the licence and the request to renew.
2. The explanation you provided in your email dated 08/08/2014.
3. The fact that each request is reviewed on its individual merits.
4. The fact that you were reminded in writing to renew your licence in a letter dated 26/06/2014 and in particular the fact that the said letter stated "If you do not renew your licence by the expiry date we cannot renew it and you will have to make an application for the grant of a new licence. Any new application will be dealt with according to this Authority's Licensing policy".

I acknowledge that you claim to not have received the renewal documents but notwithstanding this, it remains entirely your responsibility to renew your licence on time.

5. The fact that you did not take any action to notify the council of the fact that you may not be able to renew your licence in time.

You claim that Cathy Barnfield advised you that you cannot renew your licence until the vehicle has passed the MOT and on that advice you took no action with regards to the renewal of your licence.

Officers have sought clarification from the testing station and they deny the allegation. On this basis it is not clear to me what actually transpired at the depot in terms of the advice, if in fact any, that was given to you, and I therefore added limited weight to this.

6. The fact that officers from Cheltenham Borough Council have been attempting to contact you during the course of this week to discuss the renewal of your licence but the last number you supplied the Council with was unobtainable.
7. You claim the delay in renewing your licence was as a result of a MOT failure. However, I understand from the Council's testing station that you presented your vehicle twice this week (Monday and Thursday) with the fault to the vehicle not having been rectified. You may have been able to renew your licence on time had you properly done the work to your vehicle.

Given the above, I have concluded that the circumstances were not extraordinary and as a result I am unable to renew the expired licence on this occasion.

I do not consider the circumstances to be extraordinary primarily because you had sufficient opportunity to contact the council prior to the expiry of the licence to advise us of the difficulties you were experiencing with the vehicle and to make arrangements to ensure the licence did not expire.

For your information, you are able to apply to re-licence the vehicle at any time. It will be treated as a new application and determined on individual merits as such. Due to the fact that the vehicle is older

than the permitted 5 years from the date of manufacture, any new application will be referred to the council's licensing committee for determination because the application will be contrary to the current adopted policy.