



PRCC.10 13/14

Prosperous Communities  
Committee

16 July 2013

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**Subject: Recommendation from the Licensing and Regulatory Committee on 25 June - Changes to Policy for Taxi Proprietors and Drivers**

Report by:

Director of Localism

Contact Officer:

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Purpose / Summary:

To consider the recommendation from the Licensing and Regulatory Committee regarding detailed proposals to adopt a specific policy in relation to the Intended Use of Hackney Carriage Proprietor Licences and to introduce a Knowledge Test for Private Hire/Hackney Carriage driver applicants.

**RECOMMENDATION(S):**

**That Members, having considered the recommendation from the Licensing and Regulatory Committee, and : -**

- (a) Agree that the revised process in relation to Taxi Proprietors and Drivers as detailed in appendices 1 and 2 be adopted;**
- (b) RECOMMEND to Full Council that the fee to be charged for Driver Knowledge Tests be set at £15.00; and**
- (c) RECOMMEND to Full Council that delegated authority be granted to**

**Head of Public Protection to refuse applications when the Knowledge Test has not been passed by applicants**

## **IMPLICATIONS**

**Legal: See Section 8 of Appendix A**

### **Financial : FIN/7/14**

The Council is empowered, when issuing taxi licences, to charge a fee as is considered reasonable with a view to recovering the costs of issue and administration. The proposed fee suggested for the Knowledge Test is £15.00

### **Staffing :**

The revised process in carrying out Knowledge Tests will incur some extra officer time, therefore the proposed fee should reflect the recovery of officer time to ensure where possible a cost neutral service.

### **Equality and Diversity including Human Rights :**

This matter has been considered and a EIA is attached as Appendix 3

### **Risk Assessment :**

**See Section 8 of Appendix A**

### **Climate Related Risks and Opportunities :**

### **Title and Location of any Background Papers used in the preparation of this report:**

R (App Newcastle City Council) v

Berwick-upon-Tweed Borough Council [2008] EWHC 2369"

Local Government (Miscellaneous Provisions) Act 1976

Both above documents held within Licensing Section

Minutes of Licensing and Regulatory Committee – 25 June – WLDC Website

**Call in and Urgency:**

**Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?**

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
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**Key Decision:**

A matter which affects two or more wards, or has significant financial implications

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
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**1 Introduction**

- 1.1 At its meeting on 25 June 2013, the Licensing and Regulatory Committee gave consideration to the report attached at Appendix A.
- 1.2 The Minute and resolution arising from this meeting is set out below: -

**11 REVIEW OF THE TAXI LICENSING POLICY (LR.08 13/14)**

Members gave consideration to a report which detailed proposals to adopt a specific Policy in relation to the intended use of Hackney Carriage Proprietor Licences and to introduce a knowledge test for Private Hire/Hackney Carriage driver applicants.

In presenting the report, the Licensing Team Manager outlined at length the current issues the Council was facing and how some of these emerging issues had the potential to comprise the Council's primary aim regarding taxi licensing, namely to ensure the health and safety of the travelling public.

Reference was also made to a recent High Court decision known as the "Berwick Case", the circumstances surrounding the case and the findings of which were summarised to Members.

It was stressed that the suggested amendments to the Policy were a way the Council could ensure that applications for the grant of hackney carriage licences were determined in accordance with the guidance given by the High Court.

Members congratulated the Licensing Team Manager on his thorough, clear and informative report, making particular reference to the completed EIA, which Members wished to see more of in the future.

Members asked a number of questions and in response thereto the following points were noted:-

- The intended implementation date of 1 September 2013 had been suggested in order not to penalise those persons whom had been waiting in the list for up to 6 months;
- Officers did not have concerns that in the interim there would be a deluge of applications, as all new applicants were being informed of the likely amendments to the Policy and were only being invited to proceed if they believed they could meet the new criteria;
- The suggested fee had been set on a cost recovery basis and this had been deliberately separated out from the other fees payable, as in the event of an application been refused , the application fee was refundable, as defined by statute, and therefore this arrangement would make the operational side more simplified;
- Existing drivers, were not been expected to sit the knowledge test on renewal (so long as renewal was made in a timely manner) as there was a view such persons had already been deemed fit and proper persons, and had been carrying out the function in an appropriate manner.

In response to Members' suggestions that Central Government should be lobbied on the issues raised through the report, the Licensing Team Manager made reference to a recent consultation document, which he had hoped would address some of the loop holes in the current legislation. However, having reviewed the interim findings, he was not hopeful that this would be the case and thus the need for the Policy to be amended remained.

Members welcomed the tightening up of the Policy, and its equality and fairness and on that basis it was **RESOLVED** that:

- (a) having considered the revised process in relation to Taxi Proprietors and Drivers, it be **RECOMMENDED** to the Prosperous Communities Committee that Appendices 1 and 2 of report LR.08 13/14 be adopted;
- (b) having considered the suggested fee to be charged for Driver Knowledge Tests it be **RECOMMENDED** to full Council that this be set at £15.00; and
- (c) Council be **RECOMMENDED** to grant delegated authority to the Head of Public Protection, to refuse applications when the Knowledge Test has not been passed by applicants.

## 2. Recommendation

- 2.1 Members are therefore asked to consider the recommendation from the Licensing and Regulatory Committee and: -

- (a) agree that the revised process in relation to Taxi Proprietors and Drivers as detailed in appendices 1 and 2 be adopted;
- (b) **RECOMMEND** to Full Council that the fee to be charged for Driver Knowledge Tests be set at £15.00; and
- (c) **RECOMMEND** to Full Council that delegated authority be granted to Head of Public Protection to refuse applications when the Knowledge Test has not been passed by applicants



Report No LR.08 13/14
Licensing and Regulatory Committee
June 25 2013

**Subject: Changes to Policy for Taxi Proprietors and Drivers**

Report by:	Rachel North
Contact Officer:	Phil Hinch Licensing Manager 01427-676610 Phil.hinch@west-lindsey.gov.uk
Purpose / Summary:	To inform the Members of the Licensing and Regulatory Committee of detailed proposals to adopt a specific policy in relation to the Intended Use of Hackney Carriage Proprietor Licences and to introduce a Knowledge Test for Private Hire/Hackney Carriage driver applicants.

**RECOMMENDATION(S):**

- 1) That Members consider the revised process in relation to Taxi Proprietors and Drivers and recommend to Prosperous Communities Committee to adopt Appendices 1 and 2**
- 2) That Members consider the suggested fee of £15.00 to be charged for Driver Knowledge Tests and recommend to Council for adoption**
- 3) That Council be recommended to grant delegated authority to Head of Public Protection to refuse applications when the Knowledge Test has not been passed by applicants**

## IMPLICATIONS

**Legal:** See section 8 below.

**Financial :** The Council is empowered, when issuing taxi licences, to charge a fee as is considered reasonable with a view to recovering the costs of issue and administration. The proposed fee suggested for the Knowledge Test is £15.00

**Staffing :** The revised process in carrying out Knowledge Tests will incur some extra officer time, therefore the proposed fee should reflect the recovery of officer time to ensure where possible a cost neutral service.

**Equality and Diversity including Human Rights :**

This matter has been considered and a EIA is attached as Appendix 3

**Risk Assessment:** See section 8 below.

**Climate Related Risks and Opportunities :** N/A

**Title and Location of any Background Papers used in the preparation of this report:**

R (App Newcastle City Council) v  
Berwick-upon-Tweed Borough Council [2008] EWHC 2369"  
Local Government (Miscellaneous Provisions) Act 1976  
Both above documents held within Licensing Section

**Call in and Urgency:**

**Is the decision one which Rule 14 of the Scrutiny Procedure Rules apply?**

Yes

No

**Key Decision:**

Yes

No

## Executive Summary

### What is the issue?

It has become apparent that changes to the taxi licensing process are required in order to address some emerging issues which have the potential to compromise the Council's primary aim regarding taxi licensing, which is to ensure the health and safety of the travelling public.

This is possible because it is not unlawful for anyone to apply for a hackney carriage proprietor's licence and drivers licence from this Council, without any intention of plying for hire in West Lindsey, in order only to take advantage of a pre-booking exemption. Until recently this has never been a problem, however WLDC is now seeing just such applications with the end result being that they are clearly operating in major towns and cities across the north of England under the authorisation of WLDC licenses. Due to the vehicles operating remotely from the WLDC area this puts public safety at risk and enforcement extremely difficult. Furthermore the local Council area where the vehicles are operating are powerless to enforce on these vehicles as they are not the Licensing Authority for these vehicles. This process also has the potential to cause WLDC reputational issues as other Council's are contacting WLDC requesting information on how we are going to carry out enforcement action regarding such vehicles and drivers.

### Is there any advice from the Court's on the issue that WLDC has currently?

A High Court decision handed down in 2008 known as the "Berwick Case" suggests that the licensing legislation is intended to provide a local control over hackney carriages and their drivers, for the protection of the public. This implies that in general the licensing system should operate in such a way that the authority licensing hackney carriages is the authority for the area in which those vehicles are principally used.

### What is WLDC proposing to deal with the issue?

As a result of the guidance handed down from the High Court, a Council exercising its discretion could refuse to licence vehicles operating in this manner. Therefore this report details amendments to policy on how this Authority would deal with such applications, with a presumption to refuse applications when the intention is to predominantly operate out of the WLDC authorised area. Appendix 1 and 2 refers which also includes the provision of a Knowledge Test for all new Driver applications. To be clear the risk to public safety is not about where applicants are originating from, the issue is once licensed, where the applicants then operate from and if it is remote from the WLDC administrative area there is the potential for public safety and WLDC reputation to be compromised.



The proposed draft policy at Appendix 1 is the suggested way forward in order for WLDC to ensure that application for the grant of hackney carriage licences are determined in accordance with the guidance given by the High Court in its judgement and the declaration made in the case of Newcastle City Council v Berwick upon Tweed Council [2008]. The policy which Appendix 1 is based around has been successfully defended at the Crown Court on at least 3 occasions.

All 340 licensed drivers have been consulted about the draft proposals.

## 1. Introduction

1.1 West Lindsey District Council is responsible for licensing all drivers, operators and vehicles used to provide taxi services in the District. There is currently in place “Guidance for Members General Policy”, adopted in 2008 which provides advice for Members and applicants in relation to taxi and private hire drivers only.

1.2 It has become apparent that changes to the taxi licensing process are required in order to address some emerging issues which have the potential to compromise the Council’s primary aim regarding taxi licensing, which is to ensure the health and safety of the travelling public.

1.3 There are two types of Hire Vehicles, Hackney Carriages and Private Hire Vehicles. A hackney carriage is what most people would call a ‘taxi’. Its main features are: it carries passengers in return for payment; it may advertise itself to be for hire and be hailed in a street in the area of the council with which it is licensed; or it may be hired from a taxi-rank in the area of the council with which it is licensed. It differs from a private hire vehicle (sometimes called a ‘minicab’), which also carries passengers for reward, but must be pre-booked with a private hire operator – it cannot be hailed in the street, or hired from a rank.

1.4 The drivers and proprietors of hackney carriages and private hire vehicles are subject to licensing requirements. There are two quite separate regimes, however, for the licensing of each. The Town Police Clauses Act 1847 provides for hackney carriage licensing. The Local Government (Miscellaneous Provisions) Act 1976 provides for private hire licensing and some additional provision for hackney carriage licensing. Both driver and vehicle licenses must be issued from the same authority.

1.5 A hackney carriage may only ply for hire within the area of the relevant licensing authority. (That is the authority which granted the licence.) However, a hackney carriage in respect of which a hackney carriage licence is in force is exempt from the private hire vehicles licensing requirement, and so may be pre-booked to pick up and carry passengers for reward either within or outside the area of the relevant licensing authority. In other words, a properly licensed Hackney Carriage is restricted to ‘plying for hire’ only in the area where it is licensed, but it may also undertake pre-booked work anywhere in England or Wales.

## 2. The Current Issue

2.1 It is possible to apply for a hackney carriage proprietor’s licence from this Council, without any intention of plying for hire in West Lindsey, in order only to take advantage of the pre-booking exemption. This practice, although not unlawful, is a barrier to effective local control because drivers and vehicles may be operating in an area of great distance from West Lindsey.

2.2 The obvious problem with vehicles and drivers licensed by this Authority who then choose to operate remote from this area means that potentially

there could be undesirable consequences? It is without doubt that the Licensing Authority will not easily be able to keep their licensed fleet under observation and any enforcement action would be from a great distance. The Licensing Authority area where the hackney carriage has chosen to operate will have no enforcement powers over these vehicles, even though they are being used in its area. Additionally, the hackney carriage from remote areas will not be subject to the same conditions and byelaws as the local licensed vehicles.

2.3 All of the above scenario's are undesirable as they compromise public safety and pose a risk to the reputation of WLDC if left unchecked, bearing in mind the Council has a duty to licence hackney carriage and private hire vehicles and their drivers. Part of that duty is to ensure that licensed vehicles are safe and suitable and that Operators, Proprietors and Drivers have proper regard to the safety of the public and are 'fit and proper' persons to hold licences. It is difficult to see how public safety cannot be compromised when vehicles and drivers licensed by WLDC are operating hundreds of miles away.

2.4 The licensing section regularly receives enquiries from other licensing teams across the country enquiring how WLDC will enforce licence conditions when WLDC licensed vehicles and drivers are operating remotely from its area, typically Bradford, Manchester, Barnsley and Doncaster. This not only causes tensions between different Local Authorities but has the potential to damage WLDC reputation also.

2.5 West Lindsey District Council has recently seen a significant increase in the demand for such taxi licences, whereby the applicants decision is NOT to operate predominantly within the West Lindsey area.

2.6 It is very clear from discussions with previous applicants who intend to use vehicles out of our area that WLDC and others, are being specifically sought out by applicants looking for licences with the least onerous application criteria and processes and the lowest application fees e.g. No Knowledge Test

2.7 Many Councils, particularly those in large conurbations, have extensive licensing policy requirements relating to the age, size, disabled access, colour and construction of vehicles submitted for licensing. Similarly applicants for driver's licences may have to undertake tests including numeracy, literacy, geographical knowledge, taxi legislation and licence conditions. Some have to attend courses in manual handling, successfully undertake disability awareness training and pass a Driving Standards Agency driving test. Such testing and training is undertaken at the applicant's own expense.

2.8 West Lindsey has, by comparison, a less complex process. This more permissive approach has been sufficient, up until now, because the nature and extent of taxi businesses, in the main has been confined to our local area.

### 3. Guidance from the High Court

3.1 The High Court has provided guidance<sup>1</sup> regarding the approach to be taken by a Licensing Authority when considering applications for hackney carriage licences. This guidance indicates that the licensing legislation is intended to provide a local control over hackney carriages and their drivers, for the protection of the public. This implies that in general the licensing system should operate in such a way that the authority licensing hackney carriages is the authority for the area in which those vehicles are principally used.

3.2 It is the opinion of your officers that the judgement in the 'Berwick' case referred to in the preceding paragraph established the following principles:

- a. The scheme of the legislation is to provide a local control over hackney carriages and their drivers, for the protection of the public. This implies that in general the licensing system should operate in such a way that the authority licensing hackney carriages is the authority for the area in which those vehicles are principally used
- b. A licensing authority is obliged to have regard to whether an applicant for a licence intends that the hackney carriage if licensed will be used to ply for hire within the area of that authority. It would be a lawful exercise of the authority's discretion to refuse to grant a licence to an applicant who does not so intend.
- c. A licensing authority is also obliged to have regard to whether an applicant for a licence intends that the hackney carriage will be used (either entirely or predominantly) for private hire remotely from the area of that authority. It would be a lawful exercise of the authority's discretion to refuse to grant a licence to an applicant who does so intend.
- d. It is generally desirable therefore that a licensing authority should only licence hackney carriages which it is intended will ply for hire within the area of that authority and should refuse licences to hackney carriages that do not intend to ply for hire, to a material extent, in the area.
- e. While it would not necessarily be unlawful per se to grant a licence to a proprietor who intends that the hackney carriage shall only be used remotely from the area of the licensing authority, it will rarely be rational for an authority to do. It follows that it is only in wholly exceptional circumstances that a licence is likely to be granted where the proprietor intends that the hackney carriage shall only be used remotely from the area of the authority.

<sup>1</sup> R (App Newcastle City Council) v Berwick-upon-Tweed Borough Council [2008] EWHC 2369"

- f. The discretion whether to grant or refuse remains with the licensing authority; and whilst it must not be exercised so as to frustrate the policy of the legislation, “there will be proprietors who wish to use their vehicles in a number of different authorities’ areas and in that case no doubt there will be flexibility in the exercising of the discretion”.

#### **4. Proposals on the way forward in West Lindsey**

4.1 Your licensing officers have drawn up a set of proposals intended to set out a clear position and procedure under which this Council will make its decisions regarding hackney carriage applications where it seems that the applicant does not intend to ply for hire in West Lindsey.

4.2 The proposals will create a presumption against licensing hackney carriage vehicles which may be operated outside of the WLDC district and will require applicants to declare their intentions when applying for a licence. The proposals also require new drivers to meet standards of numeracy, literacy and geographical knowledge. Officers believe that the measures, although comprehensive, are the minimum now necessary to maintain standards and safety, to protect the public and promote an effective local service. Furthermore knowledge testing ensures that applicants have a good knowledge of the geography of West Lindsey and Lincolnshire in general, and an awareness of the rules and regulations that apply to licensed drivers.

#### Summary of Proposals

- Introduction of an ‘intended use’ policy to ensure that, as far as possible, WLDC is able to maintain safe and suitable hackney carriages and a local taxi service in line with current Case Law. The draft Policy is detailed in Appendix 1.
- To require applicants to make a declaration regarding the intended use of the vehicle. (Appendix 1)
- To introduce a knowledge test for all new driver licence applicants (WLDC issues combined licences). There will be a fee charged per test. The proposal is detailed in Appendix 2.
- To apply these provisions to all new applicants, but retain ‘grandfather rights’ for existing licence holders (subject to special provisions for vehicle transfer applications). To clarify this would mean that existing driving licence holders would be exempt from any of these new provisions, provided they renew their licences promptly, ahead of the expiry date, however the renewal of hackney carriage proprietor licence would still have to satisfy the criteria contained within section 2 of Appendix 1.

#### **5. Consultation**

5.1 The Council has consulted with all of the current holders of WLDC driving licenses, a total of 340 individuals.

5.2 At the time of compiling this report only 2 responses have been received from the consultation process, which would not suggest a change to the draft policy at Appendix 1. Due to the consultation period ending after the deadline for this report being circulated, it will not be possible to publish any further responses, however should further responses be received the details will be made available for Members consideration at the Committee meeting and will be circulated earlier if possible.

## **6. Implementation and Financial Implications**

6.1 The WLDC Taxi and Private Hire Guidance for Members document will be supplemented by a separate policy dealing specifically with “intended use”. As this report is suggesting a change of policy, the Licensing and Regulatory Committee can support this new process if desired and make a recommendation for adopting the new arrangements, however for the revised process to be adopted means the matter will have to be referred to Prosperous Communities Committee to authorise.

6.2 The WLDC Taxi and Private Hire Guidance for Members document will also be amended to detail the requirements for drivers licence applications to successfully undertake a knowledge test, comprising assessments of basic reading, writing, arithmetic and local geographical knowledge. Applicants will be allowed three attempts to pass the tests. After three failed attempts the application will be deemed to have been unsuccessful and they will have to wait 12 months before making a further application.

6.3 The Council will have to set an additional fee for the knowledge test, the suggested fee is £15.00 per test per person. The fee will be based on the reasonable costs incurred in facilitating the test, including officer time.

## **7. Transitional Arrangements**

7.1 Should Members be minded to approve the adoption of Appendix 1 and 2 it is suggested that transitional arrangements be put in place to be fair to the many applicants who have been given appointments for applications from earlier in the year and are still waiting to be processed.

7.2 Therefore it is suggested that all existing applicant appointments be honoured under the current arrangements and that these applicants be allowed to apply for vehicle proprietor licenses under the current arrangements also. Any new applications received on or after September 01 2013 will all be subject to the new arrangements contained within Appendix 1 and 2 if approved.

## **8. Legal Considerations**

8.1 The Council has sought legal opinion regarding the draft policy proposals, however a written response has not formally been received at the time of compiling this report. That said, officers are of the belief that the draft policy suggested at Appendix 1 and 2 would be suitable for WLDC to implement and

does reflect the High Court judgement detailed in the Newcastle-Berwick case. The Committee will be updated verbally at the meeting when the formal response has been received.

## **9. Risks**

9.1 Any new Policy, or decisions made based on such a policy would be open to legal challenge. However the policy being suggested by WLDC is based heavily on the Shropshire Council Policy which has successfully been defended in three challenges at the Crown Court.

9.2 Conversely there are also risks associated with not adopting the suggested Policy contained within Appendix 1 and 2. It is possible that a challenge from another Council and/or the travelling public for failing to carry out a duty of care when the main licensing objective is Public Safety.

9.3 Damage to Council reputation is also a risk by failing to adopt a revised procedure in line with the High Court guidance contained in the Berwick case 2008.

## **10. Recommendations**

### 10.1

- 1) That Members consider the revised process in relation to Taxi Proprietors and Drivers and recommend to Prosperous Communities Committee to adopt Appendices 1 and 2
- 2) That Members consider the suggested fee of £15.00 to be charged for Driver Knowledge Tests and recommend to Council for adoption
- 3) That Council be recommended to grant delegated authority to Head of Public Protection to refuse applications when the Knowledge Test has not been passed by applicants.

## **Appendix 1**

Draft:

Intended Use Policy (including statutory declaration for applicants and policy statement from the Council)

### **1. Applications for the New Grant of a Hackney Carriage Licence**

1.1 Applicants for new licences will be expected to demonstrate a bona fide intention to ply for hire within the administrative area of West Lindsey District Council under the terms of the licence for which the application is being made.

1.2 There will be a presumption that applicants who do not intend to a material extent to ply for hire within the administrative area of West Lindsey

District Council will not be granted a hackney carriage licensing authorising them to do so. Each application will be decided on its merits.

1.3 Even where the applicant intends to ply for hire to a material extent in West Lindsey, if the intention is to trade in another authority's area for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular application, there will be a presumption that the application will be refused. Each application will be decided on its merits.

## **2. Applications for the Renewal of a Hackney Carriage Licence**

2.1 Applicants for renewals of licences will be required to inform the Council whether they have a bona fide intention to ply for hire within the administrative area of West Lindsey District Council under the terms of the licence for which the application is being made.

2.2 There will be a presumption that applicants who do not intend to a material extent to ply for hire within the administrative area of West Lindsey District Council will not be granted a hackney carriage licensing authorising them to do so. Section 60 of the Local Government Miscellaneous Provisions) Act 1976 gives the Council a broad discretion to refuse to renew a licence for any reasonable cause. Each application will be decided on its merits.

2.3 Even where the applicant intends to ply for hire to a material extent in West Lindsey if the intention is to trade in another authority's area for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular application, there will be a presumption that the application will be refused. Each application will be decided on its merits.

## **3 Transfer of Ownership – when a licensed vehicle is transferred from one person to another**

3.1 Section 49 of the Local Government (Miscellaneous Provisions) Act 1976 requires that the proprietor of the licensed vehicle who transfers his interest to another must, within 14 days of the transfer, give written notice to the Council of the name and address of the transferee of the hackney carriage. The Council has no power to refuse the new proprietor: R v Weymouth Borough Council, ex p Teletax (Weymouth) Ltd [1947] KB583.

3.2 Provided the requisite notice has been given in accordance with Section 49 of the Local Government (Miscellaneous Provisions) Act 1976 the Council will register the transferee of a licensed hackney carriage as the new proprietor. This is a legal requirement.

3.3 The transferee of a licensed hackney carriage will be asked to inform the Council whether he/she has a bona fide intention to use the vehicle to ply for hire within the administrative area of West Lindsey District Council. Transferees should note the obligation under Section 73 of the Local Government (Miscellaneous Provisions) Act 1976 to give to authorised officer



information which may reasonably be required by him for the purpose of carrying out his functions under the legislation. Where there is a failure to provide the requested information, the Council will give serious consideration to exercising its powers of suspension of the licence under Section 60 of the Local Government (Miscellaneous Provisions) Act 1976 until such information is forthcoming, in addition to its powers under Section 73.

3.4 Transferees of existing licences will be expected to have a bona fide intention to ply for hire within the administrative area of West Lindsey District Council under the terms of the licence in respect of the vehicle being transferred.

3.5 Where the transferee of a licensed hackney carriage is found to have no intention to ply for hire to a material extent to ply for hire within the administrative area West Lindsey District Council and/or intends to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular case, consideration will be given (either at renewal or earlier) to the suspension or revocation of the licence under Section 60 of the Local Government (Miscellaneous Provisions) Act 1976. Where the transferee proposes to operate remotely from the administrative area of West Lindsey District Council there will be a presumption that his/her licence will be revoked. Each case will be decided on its merits.

#### **4. Change of Vehicle – when a proprietor replaces a licensed vehicle**

4.1 Applicants seeking the grant of a hackney carriage licence for a vehicle intended to replace another licensed vehicle will be asked to inform the Council of their intended use of the vehicle. There will be a presumption that applicants who no longer intend to ply for hire to a material extent within the administrative area of West Lindsey District Council will not have the new hackney carriage licence granted. Even where the applicant intends to ply for hire to a material extent within the administrative area of West Lindsey District Council, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated) then, subject to the merits of the particular case, there will be a presumption that the application will be refused. Each case will be decided on its merits.

#### **5. Revocation of Licence**

5.1 Where a licence has been granted under the terms that the applicant intends to ply for hire to a material extent within the administrative area of West Lindsey District Council but is subsequently found not to plying for hire to a material extent within West Lindsey and/or to be trading in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be frustrated), there will be a presumption that the licence will be revoked. Each case will be decided on its merits.

#### **6. Exceptional Circumstances**

6.1 Each application will be decided on its merits. However, the presumptions that intended use is to ply for hire to a material extent within the administrative area of West Lindsey District Council will be rebuttable in exceptional circumstances. Whilst it is neither possible or prudent to draw up a list of what might amount to exceptional circumstances, an applicant who claims that exceptional circumstances exist will be expected to satisfy the Council that it would not frustrate the purposes of the legislation or compromise public safety if the licence were granted, renewed or if it were not suspended or revoked as the case may be.

## **7. Reasons for Policy**

7.1 The Council wishes to ensure that application for the grant of hackney carriage licences are determined in accordance with the guidance given by the High Court in its judgement and the declaration made in the case of Newcastle City Council v Berwick upon Tweed Council [2008].

7.2 The Council is required to register the name of the new proprietor of a vehicle. It seems to the Council also to open up an obvious route to circumvent the decision of the High Court, unless precautionary steps are taken. Section 3 is intended to put the Council in a position to respond responsibly to the transfer of a West Lindsey District Council hackney carriage into the name of someone who operates outside the West Lindsey District Council zone or remotely from it.

7.3 Unless there has been a change in the proprietor's intention with regard to plying for hire within the administrative area of West Lindsey District Council, there should be no reason why he/she should not be granted a licence for a replacement vehicle. On the other hand, an applicant who obtained his first licence on the expressed intention of plying for hire to a material extent within the administrative area of West Lindsey District Council, and who on application to replace that vehicle with another, disclosed that he/she no longer so intends, effectively engages the presumption against grant that is mentioned earlier. Each case will be decided on its merits.

## **8. Application of this Policy**

The Intended Use Policy shall apply to all new applications, renewal applications and change of vehicle applications, (however applications for transfer of ownership will still be subject to the special provisions for vehicle transfer applications) contained within section 3. Where a licence holder allows their current licence to expire the Council will require a new application to be made, such application will be subject to this policy.

### **DECLARATION – INTENDED USE OF HACKNEY CARRIAGE**

*(To form part of the application form and to be signed by applicant)*

I have been advised that, based upon the decision of the High Court in the case of R. (on the application of Newcastle City Council) –v- Berwick upon-Tweed Borough Council 2008, West Lindsey District Council ought not to

licence Hackney Carriages which will be predominantly used outside the district.

I hereby declare that it is my intention that the vehicle licensed by me will be used predominantly in the district of West Lindsey and I understand that should this not be the case either at the date hereof or at any time thereafter the council may revoke or refuse to renew the licence under Section 60(1)(c) Local Government (Miscellaneous Provisions) Act 1976.

I understand that each case will be decided on its merits.

## **STATEMENT FROM COUNCIL**

*(For addition to Taxi Licensing Policy and inclusion on application forms)*

"If you wish to be a hackney carriage proprietor we require information, pursuant to section 57 of the Local Government (Miscellaneous Provisions) Act 1976 as to whether you intend to use the vehicle in West Lindsey or outside of the district".

You will need to be able to show what proportion of your business you propose to carry out in West Lindsey and what business will be carried out elsewhere, including the geographical location.

If we have concerns that the hackney carriage is to be used primarily outside of this area then the decision on whether to licence you would need to be made by our licensing committee.

Each case will be decided on its merits.

This is in accordance with the decision in R (App Newcastle City Council) v Berwick-upon-Tweed Borough Council [2008] EWHC 2369"

## **Appendix 2**

### **Draft Amendment to Policy:**

*(To be inserted in Guidance for Members Taxi and Private Hire General Policy)*

#### **1 Driver Knowledge Tests**

1.1 Hackney carriage drivers need a good working knowledge of the area for which they are licensed, because they can be hired directly at ranks or on the street. The Council also considers it necessary for private hire drivers to know the local area.

1.2 In order to assist the Council in determining the fitness of an applicant to hold a hackney carriage or private hire driver's licence, applicants are required to undertake a test of basic reading, writing, arithmetic, and a test to

challenge their knowledge of the area within the district of West Lindsey and the wider Lincolnshire area.

1.3 Applicants will be allowed three attempts to pass the tests. After three failed attempts the application will be deemed unsuccessful and they will have to wait 12 months before making a further application. Applicants will have to wait 2 weeks between test dates.

1.4 The applicant will be invited to sit the Knowledge Test once the approved payment has been made. The Knowledge Test will form the initial part of the application process and until the applicant has successfully satisfied this part of the process no further part of the application will be considered.

1.5 This requirement shall apply to all new applicants. Current licence holders will not be required to sit the knowledge test providing that they renew their licences promptly, ahead of the expiry date. Where a licence holder allows their current licence to expire WLDC will require a new application to be made, such application will be subject to this provision.

### APPENDIX 3 - EQUALITY IMPACT ASSESSMENT

<b>Name, brief description and objectives of policy, procedure, function?</b>	Supplement to Taxi Licensing Policy to address public safety issues. The changes will affect <u>all new applicants</u> for licences to drive taxi and private hire vehicles and/or to be hackney carriage proprietors. The effect of the new policy will be to enable the Council to refuse to grant licences to applicants who are not intending to provide a local service in the WLDC area.
<b>Have you consulted on the policy, Procedure, function and, if so, what were the outcomes?</b>	Yes, consultation with all 340 taxi licence holders. Only 2 response so far, any others received prior to the Committee date will be made available to Members.
<b>What barriers may these individuals or groups face, and how can you promote equality (where possible)?</b>	
<b>Gender</b>	There is no evidence that this policy would impact on people in any way because of this characteristic.
<b>Age</b>	There is no evidence that this policy would impact on people in any way because of this characteristic. The full Taxi Licensing Policy does contain extra requirements for licence holders over 65 (medical requirements).
<b>Disability</b>	There is no evidence that this policy would impact on people in any way because of this characteristic. The full Taxi Licensing Policy states that anyone who meets the DVLA Group 2 medical criteria and satisfies all other established criteria will get a licence.
<b>Race</b>	There is no evidence that this policy would impact on people in any way because of this characteristic.
<b>Religion or Belief</b>	There is no evidence that this policy would impact on people in any way because of this characteristic.
<b>Sexual Orientation</b>	There is no evidence that this policy would impact on people in any way because of this characteristic.
<b>Gender Reassignment</b>	There is no evidence that this policy would impact on people in any way because of this characteristic.
<b>Pregnancy, Maternity and Paternity</b>	There is no evidence that this policy would impact on people in any way because of this characteristic.
<b>Marriage and Civil Partnership</b>	There is no evidence that this policy would impact on people in any way because of this characteristic.
<b>Rural Isolation</b>	The proposals should ensure that any new hire vehicles will be providing a local service, thus benefiting our rural areas

<b>Socio-economic factors</b>	WLDC charges a set fee for taxi licences based on full cost recovery. The costs of the extra tests required by this policy will be met by the applicant.
<b>Other (e.g. those with dependants/caring responsibilities, asylum seeker and refugee communities, children in the care system, etc)</b>	There is no evidence that this policy would impact on people in any way because of this characteristic.
<b>Is there any evidence or research that demonstrates why some individuals or groups are, or are not, affected</b>	There is no evidence or research available. The WLDC taxi licensing policy is based on nationally applicable legislation. It covers <u>all applicants</u> who all must meet a set of standards and criteria intended to ensure that they are 'fit and proper' persons.
<b>If there is a potential adverse impact, please state why and whether this is justifiable</b>	<p>It is possible that there may be adverse impacts:</p> <p>a) applicants from outside Lincolnshire who intend only to work outside the County may be refused a licence. This impact is justifiable in that it reflects High Court decisions confirming that the <u>overriding aim of taxi licensing is to ensure public safety and provide a local service.</u></p> <p>b) applicants who do not possess basic levels of numeracy and literacy or who do not have an understanding of local geography and topography may be refused a licence to drive hire vehicles. This is justifiable in terms of <u>effectively managing public safety.</u></p> <p>All applicants have a right to have their case decided by the Taxi and General Licensing Sub-Committee in line with the Natural Justice Procedure, additionally there is also a right of Appeal to the Magistrates Court.</p>
<b>Outcome of EIA</b>	No major change needed <input checked="" type="checkbox"/> Adjust the policy/proposal <input type="checkbox"/> Adverse impact but continue <input type="checkbox"/> Stop and remove the policy/proposal <input type="checkbox"/>
<b>How will you monitor your policy, procedure, function to ensure there is no adverse effect on the protected characteristics (e.g. gender, age, etc) in the future?</b>	We will monitor the number of applications received and how many applications are refused and whether or not the reason is for any of the protected strands e.g. race, religion, gender, age etc. Each application will be judged on its own merits