

## **OUT OF AREA POLICY**

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**

### **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