

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO LICENSING COMMITTEE

Agenda Item No.5

meeting date: 17 September 2013
title: Intended Use Policy
submitted by: Chief Executive
principal author: Mair Hill

1 PURPOSE

1.1 To seek Committee's approval to consult upon the draft intended use policy and conditions.

1.2 Relevance to the Council's ambitions and priorities

- Community Objectives – Consideration of these issues will promote the Council's aim to be a well-managed Council.
- Corporate Priorities -
- Other Considerations -

2 BACKGROUND

2.1 The background to this issue was set out in detail in the report of the Chief Executive dated 18 June 2013. The issue was considered by Committee and it was resolved that the Council's solicitor should draft an intended use policy to be brought to committee for further consideration. The draft policy is appended to this report as **Appendix 1**.

2.2 It is also proposed that to assist the Council in making a decision on whether to grant an application on **renewal**, conditions similar to those set out in **Appendix 2** should be added to the Council's standard conditions for Hackney Carriage vehicles and attached to each Hackney Carriage Vehicle licence.

3 ISSUES

3.1 Prior to implementation of any change the Council is required to consult with its licence holders. Committee is therefore asked to consider the draft policy and conditions and authorise the Council's Head of Legal and Democratic Services to carry out a consultation.

4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications

- Resources – None.
- Technical, Environmental and Legal – Improved control of licence holders should improve public safety.
- Political - None
- Reputation – Improved public safety will enhance the Council's reputation.
- Equality & Diversity – None

5 RECOMMENDED THAT COMMITTEE

- 5.1. Instruct the Council's Head of Legal and Democratic Services to seek the views of licence holders upon the draft intended use policy and conditions contained in Appendix 1 and 2 of this report.

MARSHAL SCOTT
CHIEF EXECUTIVE

MAIR HILL
SOLICITOR

BACKGROUND PAPERS

- Report of Chief Executive dated 18 June 2013
- Appendix 1 – Draft Intended Use Policy
- Appendix 2 – Draft conditions

REF: MJH/Licensing Committee/17 September 2013

For further information please ask for Mair Hill, extension 3216

Appendix 1

Draft Intended Use Policy for Hackney Carriages

Town Police Clauses Act 1847 (the “1847 Act”)

Local Government (Miscellaneous Provisions) Act 1976 (the “1976 Act”) (together the “Taxi Legislation”)

1. Introduction

- 1.1 This policy has been written in response to the judgment in Newcastle City Council v Berwick Upon Tweed Borough Council (2008) EWHC 2369 (Admin), and the use of a Hackney Carriage as private hire vehicle in areas other than that in which it is licensed.
- 1.2 The purpose of the Taxi Legislation is to protect the public, through a licensing regime directed towards safe vehicles, fit and proper drivers and appropriate conditions of licence.
- 1.3 The licensing regime operates at a local rather than a national level. If Hackney Carriages work remotely from their licensing authority then a number of undesirable consequences follow:
- The licensing authority cannot easily observe the conduct of its licensed vehicles and drivers;
 - The licensing authority will be forced to carry out its enforcement powers from a distance; and
 - A licensing authority will have no enforcement powers over the vehicles being used within its area.
- 1.4 It is therefore generally desirable for an authority to be able to restrict the issuing of Hackney Carriage licences to proprietors and drivers who intend to ply for hire in the authority’s area. Similarly, it is generally desirable to be able to refuse to issue a licence to proprietors and drivers who do not intend to ply for hire, exclusively or predominantly, within the authority’s area.

2. Applications for the grant of a Hackney Carriage Licence

- 2.1 Applicants for new licences and renewals of licences will be expected to demonstrate a bona fide intention to ply for hire within the administrative area of Ribblesdale Borough Council (the “RVBC Area”) under the terms of the licence for which application is being made.
- 2.2 There will be a presumption that applicants who do not intend to ply for hire exclusively or predominantly within the RVBC Area will not be granted a hackney carriage licence authorising them to do so. Each application will be considered upon its own merits.
- 2.3 Where an applicant intends to ply for hire exclusively or predominantly in the RVBC Area, 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.

3. Transfer of Ownership of vehicle

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 to register the new proprietor: see **R v Weymouth Borough Council, ex p Teletax (Weymouth) Ltd [1947] KB583.**

3.2 Provided therefore that the correct notice has been given, the Council will register the transferee of a licensed hackney carriage as the new proprietor (the “**Transferee**”).

3.3 The Transferee will be required to inform the Council whether they have a bona fide intention to use the vehicle to ply for hire within the RVBC Area. Transferees must note that failure to provide such information or to provide inaccurate information is a breach of Section 73 of the 1976 Act, which could result in the licence being suspended.

3.4 Where the Transferee is found to have no intention to ply for hire exclusively or predominantly within the RVBC Area 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 1976 Act.

3.5 Where the Transferee proposes to operate remotely from the RVBC Area there will be a presumption that his licence will be revoked. Each case will however be decided on its merits.

4. Change of 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 exclusively or predominantly within the RVBC Area of the Council will not have the new hackney carriage licence granted.

4.2 Where the applicant intends to ply for hire exclusively or predominantly within the RVBC Area but also intends to trade in another authority’s area for a substantial amount of time (and it appears to 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.

5. Revocation of Licence

5.1 Where a licence has been granted on the basis that the applicant intends to ply for hire exclusively or predominantly within the RVBC Area but is subsequently found to be doing so or found to be also trading in another authority's area for a substantial amount of time (and it appears to that the purpose of the legislation and public safety will be frustrated) there will be a presumption that the licence will be revoked.

6. **Exceptional Circumstances**

6.1 Each application will be considered on its merits and the presumptions set out above will be rebuttable in exceptional circumstances. It is not possible to list the circumstances, which would be deemed to be exceptional. Applicants would however need to show that the circumstances would not frustrate the purposes of the legislation or compromise public safety if the licence were to be granted, renewed or if it were not to be suspended or revoked which ever the case may be.

Appendix 2

Draft Conditions

1. The proprietor of a hackney carriage vehicle, which is licensed as a hackney carriage by the Council, shall ensure that an accurate and contemporaneous record is made and maintained either by himself or the driver of the vehicle, of all uses of the vehicle when being used to fulfil pre-booked hirings other than through a contract for hire with a Private Hire Operator licensed by Ribble Valley Borough Council (the “**Record**”).
2. The Record must be recorded in a stitched or heat/glue bound book so as to provide a continuous record without breaks between rows. It must clearly and legibly display the details of the vehicle to which it relates, including the make, model, registration number and vehicle number.
3. The Record must include at least the following information:
 - 2.1 date;
 - 2.2 time of first ‘pick up’;
 - 2.3 first ‘pick up’ point by location/name/address (including house number);
 - 2.4 destination point by location/name/address (including house number);
 - 2.5 the name and address of the operator on behalf of which the journey was being undertaken;
4. Upon request the Record shall be produced to or available for inspection at any time by a police officer or PCSO and/or an officer of any local authority that through the course of their normal duties are authorised to inspect the licensed vehicle.
5. The Record, when full shall be forwarded to the Head of Legal and Democratic Services, Council Offices, Church Walk, Clitheroe, Lancs, BB7 2RA.
5. Should the holder of any hackney carriage proprietors licence wish to maintain a record of use in any other format than set out above, they must obtain prior approval from the Head of Legal and Democratic Services.