

WEST OXFORDSHIRE DISTRICT COUNCIL
MISCELLANEOUS LICENSING SUB-COMMITTEE

27 AUGUST 2015

INTRODUCTION OF AN “INTENDED USE” POLICY FOR HACKNEY CARRIAGE PROPRIETORS

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(The decisions on this matter will be a resolution)

1. PURPOSE

To consider the introduction of an “intended use” Policy for hackney carriage vehicles licensed by West Oxfordshire District Council

2. RECOMMENDATION

That the Sub-committee considers and determines the introduction of an “Intended use” policy for new and existing hackney carriage vehicles licensed by West Oxfordshire.

3. BACKGROUND

3.1. **Intended use policy** – Recent High Court cases have deemed the following acceptable:-

- a hackney carriage vehicle licensed by one local authority can be used to fulfil pre-booked hiring’s on behalf of a private hire operator licensed by another local authority;
- in deciding whether to issue a hackney carriage vehicle licence, a licensing authority is obliged to have regard to whether an applicant for a hackney carriage vehicle licence intends their hackney carriage vehicle, if licensed, to be used entirely or predominantly for the purpose of fulfilling pre-booked hiring’s on behalf of a private hire operator licensed by another local authority;
- it is proper that a local authority may refuse to grant a hackney carriage vehicle licence where the applicant for that licence intends their hackney carriage vehicle to be used entirely or predominately for the purpose of fulfilling pre-booked hiring’s on behalf of a private hire operator licensed by another local authority.

3.2. **Current Position** - The Council’s current hackney carriage / private hire policy does not take into account the guidance given in recent high court cases, in that it does not have regard to whether an applicant for a hackney carriage vehicle licence intends their hackney carriage vehicle, if licensed, to be used entirely or predominantly for the purpose of fulfilling pre-booked hiring’s on behalf of a private hire operator licensed by another local authority. In addition under the Council’s current hackney carriage / private hire policy, including the conditions attached to hackney carriage vehicles, the Licensing Authority has no means of ascertaining if the proprietor/driver of a hackney carriage vehicle it licences, or is about to licence, intends to ply for hire within West Oxfordshire; or whether they intend their hackney carriage vehicle, to be used entirely or predominantly for the purpose of fulfilling pre-booked hirings on behalf of a private hire operator licensed by another local authority. The major purpose behind the taxi legislation is the safety of the public (both passengers and other road users). Thus, the scheme of the legislation is directed towards having safe vehicles, fit and proper drivers and appropriate local conditions of hire. If hackney carriages work remotely from the area of the authority which has licensed them a number of, at least potentially, undesirable consequences follow, i.e.

- The licensing authority will not easily keep its licensed fleet under observation;
- The licensing authority will be carrying out its enforcement powers from a distance;
- The local authority in whose area the vehicle is operating will have no enforcement powers over it; and
- The vehicle will not be subject to the local conditions/byelaws of the local authority in whose area it is operating.

3.3. **Proposed Policy** - In order to ensure applications for the grant of a hackney carriage vehicle licence are determined appropriately, officers are proposing the current hackney carriage / private hire policy be amended so as to include the 'intended use' of a hackney carriage vehicle.

3.4. The effects of this policy would be, that for the following types of application:-

- New vehicle licence;
- Renewal of vehicle licence;
- Transfer of vehicle ownership;
- Change of vehicle;

3.5. The applicant would be expected to demonstrate a bona fide intention to ply for hire within West Oxfordshire. Although each case will be considered on its merits, there will be a presumption to refuse an application where it is the intention of the applicant to ply for hire, to any material extent, outside of West Oxfordshire.

3.6. **New applicants** wishing to licence a hackney carriage with West Oxfordshire District Council will be required to make a statement about their intended use of the vehicle, i.e., whether the applicant intends the vehicle to be used:

- (i) Exclusively or predominantly to ply for hire/private hire in West Oxfordshire;
- (ii) Exclusively or predominantly for private hire remotely from the West Oxfordshire; and/or
- (iii) In some other manner to carry fare paying passengers.

If the answer to (i) is "no" and/or the answers to (ii) and (iii) are "yes", then this will lead to a presumption of refusal unless the applicant satisfies the Council that it may grant the licence without undermining the purpose of the governing legislation. (Exceptional grounds for example may include a vehicle employed to specifically transport disabled passengers).

3.7. **Renewal of a hackney carriage vehicle licence** – In addition to the requirements outlined at para 3.6 above in order to assist the Licensing Authority in making a decision on whether to grant an application for a renewal, officers are proposing the following conditions be attached to hackney carriage vehicle licences:

- The proprietor/driver of the hackney carriage vehicle licence 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 hiring's on behalf of a private hire operator licensed by another local authority;

3.8. The accurate and contemporaneous record should include, at a minimum, the following information, and be recorded in a stitch or heat / glue bound book so as to provide a continuous record without breaks between rows:-

- Date;
- Time of first pick up;
- First 'pick up' point by location / name / address including house number, destination point by location / name / address including house number
- The name and address of the operator on behalf of which the journey was being undertaken;
- Each book shall legibly and clearly display the details of the vehicle to which it relates, including the make, model, registration number and vehicle licence number;
- The record of journeys shall be available for inspection at any time by a police constable or PCSO; and an officer of any local authority who through the course of their normal duties are authorised to inspect the licensed vehicle;
- Each book, when full, shall be forwarded to the Licensing Section;
- Where the holder of a hackney carriage proprietor's licence wishes to maintain a record of use in any other format than set out above, prior approval must be obtained from the Principal Public Protection officer.
- Be able to evidence the number of days over the previous year they have plied for hire in West Oxfordshire

3.9. Members should be aware that licence holders will **only** need to comply with the proposed conditions in paragraph 3.7, if their hackney carriage is used to fulfil private hire journeys on behalf of a private hire operator that is not licensed by West Oxfordshire District Council.

3.10. Implementing the proposed policy and its supporting conditions will align the Council's current hackney carriage / private hire policy with the guidance passed down in the recent high court cases. In addition it will provide a means for officers to determine if a hackney carriage is being used to fulfil pre-booked hiring's on behalf of a private hire operator licensed by another local authority; with the information being used to determine if a licence should be granted or not.

4. Legal Services Comments

4.1. Under s57 of the Local Government (Miscellaneous Provisions) Act 1847 the Council may require the applicant for a hackney carriage proprietor's licence to submit to them such information as they may reasonably consider necessary to enable them to determine whether the licence should be granted and whether conditions should be attached to any such licence. In the case of R (on the application of Newcastle City Council) v Berwick-Upon-Tweed Borough Council & Ors [2008], the Judge stated that it would be within a local authority's discretion to refuse to license a hackney carriage when it knows that the applicant has no intention of using that licence to ply for hire in its area.

4.2. Under s47 of the Local Government (Miscellaneous Provisions) Act 1847, when issuing a hackney carriage proprietor's licence the Council may attach to the licence such conditions as it considers reasonably necessary. Any person aggrieved by any conditions attached to such a licence may appeal to the magistrates' court. (A Evans)

5. ALTERNATIVES/OPTIONS

That, the sub-committee may decide not to introduce an "Intended use" policy for hackney carriage vehicles.

6. FINANCIAL IMPLICATIONS

The current licence fee for a vehicle is £280. Should there be a reduction in the number of vehicles licensed by the authority this will be reflected in the Licensing income stream.

7. RISKS

There is a reputational risk that members of the hackney carriage trade may not agree with this policy. Secondly, that there may be a small reduction in fee income if there is a reduction in the licensed vehicle numbers. (See 6.1 above).

8. REASONS

The Council exercises control over Taxi and Private Hire operations in accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1976 to ensure that vehicles, operators and drivers meet the required standards in order to protect the public.

Bill Oddy, Shared Head of Public Protection

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Background Papers:

None