



CAERPHILLY COUNTY BOROUGH COUNCIL

INTENDED USE POLICY FOR THE LICENSING OF HACKNEY CARRIAGES

1. INTRODUCTION

- 1.1 The purpose of this policy is to set out how the Council will deal with the licensing, renewal and transfer of hackney carriage vehicles following the High Court Judgement – Newcastle City Council v Berwick upon Tweed [2008] EWHC 2369 (Admin). The Council, when considering new applications for hackney carriage proprietors licences will determine those applications in accordance with the principles contained within the judgement of the above case as set out below in the reasons for the policy. The policy was approved at a meeting of Caerphilly County Borough Council's Licensing Committee on 11th December 2014, effective from 1st January 2015.
- 1.2 The Council will determine each application on its merits, but will place public safety above all other considerations.

2. APPLICATIONS FOR THE NEW GRANT OF A HACKNEY CARRIAGE LICENCE

- 2.1 Applicants for new licences will be expected to demonstrate a bona fide intention to operate predominantly within the administrative area of Caerphilly County Borough Council 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 predominantly operate within the administrative area of Caerphilly County Borough Council will not be granted a hackney carriage licence authorising them to do so. Each application will be decided on its merits.
- 2.3 Even where the applicant intends to operate predominantly in the area of Caerphilly County Borough 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 compromised) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

3. APPLICATIONS FOR THE RENEWAL OF A HACKNEY CARRIAGE LICENCE

- 3.1 Applicants for renewals of licences will be required to inform the Council whether they have a bona fide intention to operate predominantly within the administrative area of Caerphilly County Borough Council under the terms of the licence for which application is being made.
- 3.2 There will be a presumption that applicants who do not intend to predominantly operate within the administrative area of Caerphilly County Borough Council will not be granted a hackney carriage licence authorising them to do so. Section 60 of Local Government

3.3 Miscellaneous Provisions Act 1976 [LG(MP)A 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.

3.4 Even where the applicant intends to operate predominantly within the Caerphilly area, 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 compromised) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

4. APPLICATION FOR THE TRANSFER OF A HACKNEY CARRIAGE LICENCE

4.1 Section 49 of the Local Government (Miscellaneous Provisions) Act 1976 requires that the proprietor of a licensed vehicle who transfers his interest to another person must, within 14 days of the transfer, give written notice to the Council of the name and address of the new proprietor of the hackney carriage.

4.2 The Council has no power to refuse to register the new proprietor provided requisite notice has been given in accordance with section 49 of the LG(MP)A 1976, the Council will register the new proprietor of a licensed hackney carriage. This is a legal requirement.

4.3 New proprietors should note the obligation under section 73 of the LG(MP)A 1976 to give an 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 LG(MP)A 1976.

4.4 New proprietors of existing licences will be expected to have a bona fide intention to predominantly operate within the administrative area of Caerphilly County Borough Council under the terms of the licence in respect of the vehicle being transferred.

4.5 Where the new proprietor of a licensed hackney carriage is found to have no intention to operate predominantly within the administrative area of Caerphilly County Borough 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 compromised 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. Where the transferee proposes to operate remotely from the administrative area of Caerphilly County Borough Council there will be a presumption that his licence will be revoked. Each case will be decided on its merits.

5. REPLACEMENT VEHICLES

5.1 In respect of proprietors who wish to replace existing licensed vehicles unless there has been a change in the proprietor's intentions with regard to plying for hire within the administrative area of Caerphilly Council there should be no reason why they should not be granted a licence for a replacement vehicle. However, an applicant who obtained the first licence on the expressed intention of plying for hire entirely or predominantly within the administrative area of Caerphilly Council, and who on application to replace that vehicle with another discloses they no longer so intend, will effectively engage the presumption against grant of a licence.

6. REVOCATION OF LICENCE

6.1 Where a licence has been granted under the terms that the applicant intends to operate predominantly within the administrative area of Caerphilly County Borough Council but is subsequently found not to be operating predominantly within the Caerphilly area and to be trading 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 compromised) there will be a presumption that the licence will be revoked.

7. EXCEPTIONAL CIRCUMSTANCES

7.1 Each application will be decided on its merits. However the presumptions that intended use is to operate predominantly within the administrative area of Caerphilly County Borough Council will be rebuttable in exceptional circumstances. Whilst it is neither possible nor 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 be able to satisfy the Council that it would not compromise the purposes of the legislation or public safety if the licence were granted, renewed or if it were not suspended or revoked as the case may be.

8. REASONS FOR POLICY

8.1 The Council wishes to ensure that applications for the grant of hackney carriage licences are determined in accordance with the guidance given by the High Court in its judgement in the case of Newcastle City Council v Berwick upon Tweed Council [2008]. The following statements were made in this judgement -

- a) *“It was the intention behind the licensing system that it should operate in such a way that the authority licensing hackney carriages is the authority for the area in which those vehicles are generally used”*
- b) *“A licensing authority, properly directing itself, is entitled and indeed obliged to have regard to whether in fact the applicant intends to use that hackney carriage predominantly, or entirely, remotely from the authority’s area”*
- c) *“It must be desirable for an authority issuing licences to hackney carriages to be able to restrict the issuing of those licence to proprietors and drivers which are intending to ply for hire in that authority’s area”*
- d) *“While I cannot at the moment conceive of it being rational to grant a licence to those who intend to operate their hackney carriages remotely from [the local authority’s area] I am not prepared to say that it is bound to be unlawful”*
- e) *“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. Matters such as where the proprietor is based and where most of the business comes from will be material matters to consider”*

8.2 The Council is required to register the name of a new proprietor of a vehicle when a licence holder properly notifies it of the transfer of his interest in a vehicle to a new proprietor. This appears to open up an obvious route to circumvent the decision of the High Court, unless precautionary steps are taken. The paragraph relating to ‘Application for the transfer of a hackney carriage licence’ is intended to put the Council in a position to respond responsibly to the transfer of a Caerphilly hackney carriage into the name of someone who operates outside of Caerphilly County Borough Council area or remotely from it.