

**DIRECTOR OF PLANNING AND PLACE**  
**OFFICER DECISION**  
**CHANGES TO CRITERIA FOR RESIDENTS' PARKING PERMITS**  
**13 MAY 2020**

**1. EXECUTIVE SUMMARY**

1.1. This report proposes some changes to the residents' parking permit scheme eligibility criteria and terms and conditions. The main changes are:

- Allow applications from residents who are the main drivers of vehicles for which another member of the household is the registered keeper;
- Refuse refunds for fraudulent applications;
- Relax proof of residency requirements for military personnel;
- Allow the reasonable withdrawal of permits from residents who are found to have left their engines idling;
- Change the data protection statement to allow the Council to contact permit holders whose vehicles are causing an obstruction;
- Add wording to clarify the second permit surcharge policy;
- Advising permit holders that they should not trail cables across the footway
- Accept applications from 'brand ambassadors' who are not registered keepers;
- Accept applications from residents who employ non-resident chauffeurs;
- Clarification of the approach to permits for Motability vehicles; and
- Clarify that if a permit has not arrived by five working days after it was due to start and the resident has not informed the Council of its loss, the resident will be charged for a duplicate permit.

**2. BACKGROUND**

2.1. There has been pressure on parking in Kensington and Chelsea for many years. The Controlled Parking Zone covers the entire borough and, with approximately 29,250 permit holders' parking bays and around 35,000 parking permits (including Purple Badges) on issue at any time, demand for parking space is high.

2.2. We are the only London borough to offer a borough-wide residents parking permit that allows residents to use their permits to park in any residents' parking bay across the Borough. This makes our residents' permit a highly valuable asset and susceptible to fraudulent applications, so we have strict eligibility criteria to ensure only *bona fide* residents obtain permits. Customer Services, the team within the Council that issues the permits, will refuse a permit application if the applicant does not meet the criteria of the residents' permit scheme or is unable to provide the required documents or supporting evidence. When residents feel that they have

mitigating or exceptional circumstances, they may appeal to the Permit Appeals Panel. This panel comprises officers from Customer Services, Parking Operations and Parking Policy teams.

- 2.3. Between 1 January 2019 and 31 December 2019, the Panel considered 84 appeals. In 61 of these cases permits were issued, in 14 cases they were refused, and 9 cases were not pursued or are still under investigation.
- 2.4. The cases that come before the Panel are reviewed once a year to consider whether any changes should be made to the eligibility criteria. This report considers common reasons for appeals and issues raised by Customer Services officers. We also use this opportunity to make minor changes in support of the Council's policy objectives, for instance in relation to idling engines and electric vehicles, and to improve the Service following feedback from residents.

### **3. PROPOSAL AND ISSUES**

#### **Applications from residents who are the main drivers of vehicles for which another member of the household is the registered keeper**

- 3.1. The current terms and conditions for a residents' permit require every applicant to be the registered keeper of the vehicle and no resident may have more than one permit. This prevents couples or households who have two cars in one name from obtaining a permit for the second vehicle.
- 3.2. Officers propose that the terms and conditions be amended to allow applications from residents who are the main driver of vehicles for which another member of the household is the registered keeper. The V5C form would need to be registered to the same address (or be a vehicle supplied through a company car scheme) and the driver would need proof of residency and a driving licence and insurance at that address.
- 3.3. There is a risk that this change could encourage non-driving residents to obtain provisional driving licences solely to apply for a permit, on behalf of someone else in the household. This in turn will increase the number of permits on issue. However, we do ask for a valid insurance policy and proof that the applicant is learning to drive and after three years the applicant must produce a valid theory test certificate.

#### **Refuse refunds for fraudulent applications**

- 3.4. We currently refund application fees where the applications are found to be false and refused. For example, an ex-resident trying to renew a permit to which they were not entitled would have the application refused but the permit fee would be refunded. The Parking Guide says, "*We may not give a refund for any permit that we withdraw*". It does not cover situations where we refuse to issue the permit.

- 3.5. Refunding fraudulent applications does not provide any disincentive to someone considering such an application. Other Councils including the London Boroughs of Hammersmith & Fulham, Wandsworth and Haringey do not refund false applications.
- 3.6. Officers propose that the residents' permit terms and conditions are amended to state that: *"We will not give a refund for any permit we withdraw or any false application, such as one made by a non-resident"*. This may help to reduce the number of false applications but could also result in complaints from people genuinely applying in error. In this instance, the Council would seek to establish the true facts before reaching a conclusion, assessing each case on its individual merits, and reasonably issuing refunds where a genuine case is proven to exist.
- 3.7. Customer Services would refer applications believed to be fraudulent to the Council's Fraud Investigations Team. That team will contact the applicant to advise of the area of concern and invite an explanation or mitigating circumstances to justify the application. Having considered the circumstances of the case, the Fraud Investigations Team would decide whether a refund should be issued or withheld based on the balance of probability that it was fraudulent.

#### **Relax proof of residency requirements for military personnel**

- 3.8. Applicants must provide two proofs of residency and the address shown on the V5C must be in the borough. Military personnel move home frequently and are sometimes housed in the Borough whilst on active service. It is not practical for them to re-register their vehicle every time they move or to change their driving licence (which is a proof of residency) to the new address. These cases are referred to the Permit Appeals Panel which, in practically every case, approves the application.
- 3.9. Officers propose that the permit application form be updated to enable the acceptance of a letter from Mears (the agency used by military housing) as proof of residency, doing away with the inconvenient requirement for military personnel to change their vehicle registration or driving licence details.

#### **Change data protection statement to allow us to contact permit holders causing an obstruction**

- 3.10. The Council cannot use personal data supplied on a permit application form for other purposes such as notifying residents when their vehicle is causing an obstruction. Therefore, the Council is powerless to act when receiving complaints about permit holders parking too close to other vehicles and preventing others from leaving the parking space.
- 3.11. Officers propose that the Council changes its data protection statement, to add new text underlined below, to read:

**The Royal Borough of Kensington and Chelsea will handle the personal information you provide in line with the requirements of the Data Protection Act 2018 and the General Data Protection Regulations (GDPR).** We will use it to decide whether you qualify for a permit and for the purpose of administering, processing and issuing a permit. This will include sharing it for the purpose of enforcing parking restrictions or enforcement action, where we have an outstanding Penalty Charge Notice issue with you. We may contact you (by mail, telephone or email) for the purpose of managing, evaluating and enhancing the service and as part of the Courtesy Call Service. We may also use this information to contact you if your vehicle is parked in such a way so as to cause a nuisance to others, for example, if a neighbouring vehicle is blocked in by your vehicle, or has been witnessed idling by a Civil Enforcement Officer or Council employee. We may also contact you if we think your vehicle is at risk of being damaged, e.g. due to the presence of nearby works. We may also use this information to contact you, if you are found to be breaching the terms and conditions under which your permit was issued. For more information on how your data will be used, please see the Council's Fair Processing Notice which can be found at <https://www.rbkc.gov.uk/footer-links/data-protection/fair-processing-notice> and the Council's Parking Privacy Notice <https://www.rbkc.gov.uk/parking-transport-and-streets/privacy-notice-parking-services>

### **Withdrawal of permits from residents who leave their engines idling**

- 3.12. The Council would like to reduce the problem of idling engines in the Borough. The current legislation makes it very difficult to enforce the offence, because enforcement officers must first give the driver of the vehicle an opportunity to switch off the engine before a fine can be issued. This is invariably what happens.
- 3.13. The Council has sent anti-idling leaflets out with the resident parking permit renewal letters and also added an anti-idling message to the front and back page of the resident parking permit guide which can be found here. <https://www.rbkc.gov.uk/sites/default/files/atoms/files/45757%20Residents%20Parking%20Guide%20AUG%202019%20UPDATE%20WEB.pdf>
- 3.14. However, data protection rules currently prevent us writing to residents whose vehicles have been observed to be idling, to ask them to stop idling engines. Nor can we use the threat of removing the permit to deter idling by residents.
- 3.15. I propose that we add to the conditions of permit use: *"Do not leave your engine idling. Our enforcement officers may issue a Fixed Penalty Notice and if we have reason to write to you more than three times within three years to ask you to stop idling your engine, we will withdraw your permit for three months. We would only write to you if the offence was witnessed by a person such as a Civil enforcement officer or Highways enforcement officer"*.

- 3.16. The Transport Policy Team will write to offending residents and keep track of how many times they are written to. If we write more than three times, Customer Services will Pre-Cancel the permit so it is valid until expiry but cannot be renewed, add notes to the Si-Dem permit system, and contact the resident to advise them their permit will not be renewed for 3 months. We will use this method as it is not possible to physically recover permits. If we switch to a virtual permit system, we would cancel the permit on the Si-Dem system, add notes, and contact the resident to tell them their permit is no longer valid and that they may not apply for another one for three months. There is a modest risk that a very low number of offenders may continue to display their resident parking permit after it has been withdrawn and the CEOs may not be able to identify such vehicles whilst on patrol. However, this problem will be a short-term issue as (i) the permit expiry date will come and go and (ii) we will phase in virtual parking permits and this will no longer be an issue
- 3.17. The changes to our data protection statement in 3.11 above would allow us to write to these residents as they would be breaching the terms and conditions under which the permit was issued.

### **Second permit surcharge clarification**

- 3.18. The Council charge a surcharge for second and subsequent permits issued to a household, where the first permit is determined on a first-come, first-served basis. If the primary holder renews outside the grace period or returns their permit they lose their right to be the primary holder; whoever renews first when there is no primary holder becomes the new primary holder (we do this to avoid a situation where the primary holder moves out and the secondary holder still renews as the secondary holder as their status has not been changed on the system).
- 3.19. This is often misunderstood by applicants and is currently not included in the residents' parking permit guide. Officers propose that the guide be amended to clarify this point.

### **Advising permit holders not to trail cables across the footway**

- 3.20. The Council does not allow residents to run cables from their homes across the footway to charge electric vehicles because it would constitute an obstruction of the highway under the Highways Act 1980 and be an offence under Section 178 of the Highways Act 1980. This is because placing objects on the public highway without the consent of the Highway Authority could potentially present a hazard to pedestrians and other road users. Enforcement officers can issue Fixed Penalty Notices to residents who break the law and, where appropriate, prosecute via the magistrates' court with the relevant fine being paid.

- 3.21. Officers propose that the Council add to the conditions of permit use: "*Do not trail a cable across the footway to charge your electric vehicle or otherwise use it for any other purpose when you are not with the vehicle. Our enforcement officers may issue a Fixed Penalty Notice.*"

**Accept applications from 'brand ambassadors' who are not registered keepers**

- 3.22. Increasingly the Council receives applications from residents who have been provided with a vehicle from the manufacturers as a 'brand ambassador'. The vehicle is not registered to the resident. These cases are referred to the Appeals Panel and usually granted.
- 3.23. Officers propose that the application form is updated to accept a letter from the relevant company providing the car confirming the arrangement, stating that the vehicle is for the sole use of the resident and confirming that the resident is insured to drive it. Demonstration of such proof would enable consideration of the application.

**Accept applications from residents who employ non-resident chauffeurs**

- 3.24. Residents who do not drive and who hire a non-resident chauffeur do not qualify for a permit. These cases are referred to the Permit Appeals Panel which usually, after obtaining further supporting information, approve the application.
- 3.25. Officers propose that the application form and residents' permit guide be updated to enable acceptance of the application if the applicant provides the following additional information:
- The Contract of Employment for the chauffeur;
  - The insurance policy and up to date schedule confirming that the chauffeur is insured to drive the vehicle;
  - Evidence of how the chauffeur is paid for their services (in the form of a payslip, invoices, or bank statement);
  - Chauffeur's valid driving licence.

The applicant would also need to provide proof of residency and a V5C with a RBKC address.

- 3.26. This could be seen as creating a disparity between residents who can afford to hire chauffeurs and those who cannot. However, we cannot extend this to residents who have unpaid non-resident family members drive them as this could lead to a large increase in permit numbers and would be practically impossible to monitor for abuse.

### **Clarification for applications for Motability vehicles.**

- 3.27. The Council receives applications from:
- residents who own Motability vehicles but do not drive; and
  - residents who are nominated drivers for owners of Motability vehicles, some of whom do not live in the Borough.
- 3.28. If the nominated driver has a valid UK driving licence, is listed on the Certificate of Motor Insurance and lives within a five-mile radius of the disabled person's address – we will issue permit without any further information.
- 3.29. If the nominated driver has a valid UK driving licence, is listed on the Certificate of Motor Insurance and lives at another address not within five miles of the disabled person's address – we will require proof that the Motability Scheme is aware of where he/she lives and keeps the vehicle.
- 3.30. If the nominated driver is a resident, then they can only have one permit in the Borough.
- 3.31. Our approach to Motability vehicles is currently not included in the residents' parking permit guide or website so Officers propose that the residents' parking guide be amended to clarify and give effect to the terms of the policy.

### **Notification of undelivered permits**

- 3.32. Occasionally residents do not inform the Council that they have not received their permit until they receive a Penalty Charge Notice (PCN) for failing to display a valid permit in a residents' bay. At this stage, they ask for a free replacement permit and for the PCN to be cancelled which is usually granted.
- 3.33. Officers propose that the terms and conditions of the guidance are amended to say *"You agree to renew your permit so that it will arrive on or before the current permit expires. The Council requires ten working days to renew a permit via a postal application and five working days to renew a permit via an online application. If your permit has not arrived by five working days after it was due to start you MUST inform the Council of its loss and request another permit. If you inform the Council after this time, you will be charged for a duplicate permit."*
- 3.34. Officers will remove the wording *"If your permit has not arrived by five working days after it was due to start you MUST inform the Council of its loss and request another permit. If you inform the Council after this time, you will be charged for a duplicate permit"* from the above addition to the terms and conditions, when the Council moves to a system of virtual residents' parking permits where no physical permit is issued.

## **4. RECOMMENDATIONS**

- 4.1. Officers recommend that the Director of Planning and Place:
- Approve the changes proposed in section 3 of this report; and,
  - Agree to the Director for Transport and Highways advertising the relevant traffic orders to make the above changes: and
  - Agree to the Transport Policy Team working with the Media and Communications Team to highlight the changes.

## **5. LEGAL IMPLICATIONS**

- 5.1. Section 45 (1) of the Road Traffic Regulation Act (“The RTRA”) enables the Council to designate parking places on the highway and to charge for the same under Section 46 of the RTRA. The power to charge is subject to the duty (contained in Section 122 (1) of the RTRA to secure the expeditious, convenient and safe movement of vehicular traffic and the provision of suitable and adequate parking facilities on and off the highway. Section 45 (2) of the RTRA allows the Council, when making such an Order, to designate parking places for use by such persons or vehicles or such persons or vehicles of a class as may be authorised for the purpose of such permit.
- 5.2. Any changes to the existing Traffic Management Order will be made in accordance with the Local Authorities’ Traffic (Orders) (Procedure) England and Wales) Regulation 1996.
- 5.3. As detailed above the Council must act reasonable in its decision making by applying public law principles when considering the changes to the eligibility criteria for parking permits and cite its reasons for doing so. This approach will therefore minimise the risk of a resident permit holder appealing or seeking judicial challenge from the Council and thus ensures openness and transparency throughout the process.
- 5.4. The Council must have regard to its Public Sector Equality Duty contained under section 149 of the Equality Act 2010 when deciding to implement the new changes referred to above.

## **6. FINANCIAL AND RESOURCES IMPLICATIONS**

- 6.1. It will cost about £2,000 to commission a consultant to draft these changes to our traffic order and advertise them. This cost can be met from the existing Parking budget.

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