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Date: 25th March 2020

Leader Decisions

These Decisions will be considered by the Leader of the Council on **Thursday, 2nd April, 2020**.



Robert Barlow
Chief Executive

Item	Subject	Page No.
1.	DISCLOSURES OF INTEREST (IF ANY):	
	<u>KEY DECISIONS - ITEMS TO BE RESOLVED BY THE LEADER OF THE COUNCIL</u>	
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	To consider the introduction of the Rapid Response (Fast Track) Procedure set out in Appendix A to the report presented.	
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	To consider the delegation of a supplementary waste collection service.	

EXEMPT INFORMATION:

None.

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EAST LINDSEY DISTRICT COUNCIL

Report of: Councillor Richard Fry
Executive Member for Finance

Report to:	Leader of the Council
Date:	April 2020
Subject:	The Rapid Response (Fast Track) Procedure

Decision:	Leader key decision
Relevant Executive Member:	Cllr Richard Fry Finance Portfolio Holder
Report author:	Jonathan Challen jonathan.challe@e-lindsey.gov.uk 01507 613051 Date: 28 th February 2020
Reviewed by:	Michelle Howard Michelle.howard@e-lindsey.gov.uk 01507 613216
Signed off by:	Date:
Approved for publication	John Armstrong Date: 04.03.20 Cllr Richard Fry Date:04.03.20
Does the report identify information that is exempt from publication	No

SUMMARY

The Report recommends to Members a procedure for the urgent suspension or revocation of hackney carriage / private hire drivers licences where information is received of a serious nature that may affect public safety. The proposed Rapid Response (Fast Track) Procedure is set out in Appendix A of this Report. The Council's current procedures do not address cases where such immediate action is warranted.

RECOMMENDATION

That the introduction of the Rapid Response (Fast Track) Procedure set out in Appendix A of this Report that allows for the immediate suspension or revocation of a hackney carriage or private hire vehicle driver's licence where it is considered necessary and appropriate in the interest of public safety be approved.

REASON:

To protect public safety by enabling swift action to be taken when serious issues regarding the fitness of licensed drivers of hackney carriages and private hire vehicles are notified to the Authority.

1. BACKGROUND TO REPORT

- 1.1 This Authority must satisfy itself that applicants and holders of existing hackney carriage / private hire vehicle driver's licences are a fit and proper person. Under the current policy licensed drivers whose suitability is called into question are referred to a General Licensing Committee hearing where Members determine suitability and can suspend or revoke licences.
- 1.2 This system works well in general but there are occasions where urgent action may be required which in the interest of public safety cannot be delayed until the next available General Licensing Committee hearing. This Report therefore recommends an emergency procedure where swift action can be taken in limited and very serious circumstances. The proposed procedure can be found at Appendix A of this Report.
- 1.3 The Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 set out the licensing regime in respect of hackney carriage and private hire vehicle drivers. Within the East Lindsey District drivers are normally issued with dual licences, entitling them to drive either category of licensed vehicle.
- 1.4 From time to time the Council may come into possession of information that raises concerns as to whether a person holding a driver's licence remains a fit and proper person to hold such a licence. For example, information may be received that a driver has been charged with a serious criminal offence.

- 1.5** Section 61 of the 1976 Act sets out that a Council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or private hire vehicle on any of the following grounds:
- (a) That he/she has since the grant of the licence –
 - (i) Been convicted of an offence involving dishonesty, indecency or violence; or
 - (ii) Been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this part of this Act: or
 - (b) Any other reasonable cause.
- 1.6** In the event that a decision is taken to suspend, revoke or refuse to renew a driver licence a notice must be served on the driver advising them of the decision and the reason why. The driver will have 21 days in which to lodge an appeal to the Magistrates Court against this decision and the suspension, revocation or refusal to renew will not have effect until such time as the appeal has been determined or withdrawn.
- 1.7** The 1976 Act was amended by Section 52 of the Road Safety Act 2006 so as to add a provision whereby if it appears that the interest of public safety requires the suspension or revocation of a licence, that suspension or revocation shall have immediate effect. A notice must be given to the driver which includes a statement that the suspension or revocation has immediate effect and an explanation of the reason for the decision. The driver still has a right of appeal to the Magistrates Court within 21 days of receiving the notice but is not entitled to drive a licensed vehicle until such time as any appeal is determined or withdrawn.
- 1.8** Examples of situations where immediate suspension or revocation might be warranted include:
- Allegations of indecency, including sexual assault and rape.
 - Allegations that the driver is unfit to drive as a result of being under the influence of drugs or alcohol.
- Also, an immediate suspension may take place when a driver no longer meets the Council's medical standards for licensed drivers. In these circumstances the licence suspension could have effect until the driver provides evidence to show he/she achieves the required medical standard.
- 1.9** The Local Government Association (LGA) Taxi and Private Hire Vehicle Licensing Councillor's handbook advises that if allegations of a serious nature are received then the Council should have in place procedures which allow for a rapid response. The handbook is of the view that in serious cases it is not appropriate to wait for a Licensing Committee hearing to be convened.
- 1.10** With this in mind a Rapid Response Procedure is set out at Appendix A for Member consideration. The Procedure requires determination by the Public Protection Service Manager supported by Licensing Officers and Legal Services (where appropriate). All details relating to the allegation and the identity of the driver shall be excluded from the public domain as the matter may be the subject of formal proceedings at a later stage.

2. OTHER OPTIONS CONSIDERED

2.1 To continue without a Rapid Response Procedure. This would put the safety of the public at risk due to the potential delay in arranging a Licensing Committee hearing.

3. RESOURCE IMPLICATIONS

3.1 This policy review is being undertaken as part of the normal duties carried out by the Licensing Team with no additional resources involved.

4. RISK AND MITIGATION

Risk has been considered as part of this report and any specific risks are included in the table below:

Category Risk – State if high medium or low	Action / Controls
Low	Adoption of the Rapid Response Procedure will reduce the risk to the Council to low where it is considered necessary to immediately suspend or revoke a hackney carriage or private hire vehicle driver’s licence.

5. ISSUES AND MATTERS TO TAKE INTO ACCOUNT ARISING FROM KEY CORPORATE CONSIDERATIONS (EQUALITY, SAFEGUARDING, DEPRIVATION, HEALTH & SAFETY etc.)

5.1 **Safeguarding** – The Licensing function carried out by the Council plays a key role in the safeguarding of residents. The adoption of the Rapid Response Procedure will compliment the Council’s existing safeguarding practices.

5.2 **Equality and Diversity** – The proposed policy does not have the potential to cause negative impact or discriminate against different groups in the community based on age, disability, gender, race/ethnicity, religion or religious belief (faith), or sexual orientation.

5.3 **FOI/Human Rights/Data Protection** – Human Rights: The Licensing Authority must ensure that its decisions can withstand scrutiny by reference to the principle of proportionality, i.e. is the decision / action proportionate to what it wishes to achieve, or, colloquially does the end justify the means.

A licence holder is entitled to a fair hearing; Article 6 of the European Convention on Human Rights applies.

Article 8, the right to respect for private and family life, also applies as the "licence" is crucial to the livelihood of the premises licence holder. The Human Rights of the wider community are also engaged.

6. COUNCILLOR COMMENTS

- 6.1** Support for this procedure has been given by both the General Licensing Committee at its meeting on 20th January 2020 and the Audit and Governance Committee at its meeting on 22nd January 2020.

7. CARBON REDUCTION IMPACT/IMPLICATIONS

- 7.1** None

8. CRIME AND DISORDER IMPLICATIONS

- 8.1** All Local Authorities must fulfil their obligations under Section 17 of the Crime and Disorder Act 1981 when carrying out their functions as Licensing Authorities. Section 17 places a duty on Local Authorities to do all they reasonably can to prevent crime and disorder in their area. The possible crime and disorder implications are clearly relevant factors in the consideration of a driver's licence where information in relation to a relevant crime is revealed. In giving "due regard" to these possible implications the Licensing Authority will need to consider and weigh up all the information made available at the licensing hearing and the submissions made by the licence holder.

9. FINANCIAL CONSIDERATIONS/IMPLICATIONS

- 9.1** This policy review is being undertaken as part of the normal duties carried out by the Licensing Team with no additional costs involved.
- 9.2** As with all licence matters it is possible that if a licensing decision is appealed to the Magistrates Court and the appeal is upheld, costs may be awarded against the Council. However, the judgement of the Courts is that costs should not normally be awarded against the Local Authority provided the Authority has acted properly and reasonably.

10. LEGAL CONSIDERATIONS/IMPLICATIONS

- 10.1** The Council has a mandatory obligation to licence those persons who seek to drive hackney carriages or private hire vehicles and to ensure that those drivers are fit and proper persons to do so. The prime focus for the Council is to ensure public safety, as well as providing an efficient and effective licensing service.
- 10.2** The Council does not currently have in place a procedure/policy in relation to a rapid response for existing drivers with serious public safety concerns regarding their fit and proper status. Best practice suggests that such issues should be considered within 48 hours and any decision to suspend or revoke should take immediate effect. The driver would not then be permitted to drive a licensed vehicle unless the decision is overturned on appeal to the Magistrates Court. A potential risk to public safety from the individual driving a licensed vehicle and transporting the fare paying public is removed.
- 10.3** Any new licensing policy, or decision based on such a policy, is open to legal challenge. However, the policy, subject of this Report, and recommended to the Leader, heavily reflects similar procedures already adopted by other Licensing Authorities.

11. APPENDICES

- 11.1** Appendix A – Rapid Response Procedure

12. BACKGROUND PAPERS

- 12.1** None

APPENDIX A

DRAFT DOCUMENT - Rapid Response Procedure**Following Notification of Serious Issues Relating to Licensed Hackney Carriage / Private Hire Vehicle Driver.****Procedure**

1. Notification of a serious issue to be considered under this rapid response / licence review procedure will normally only be accepted from the Police (or where appropriate from a qualified medical officer). The following list is not exhaustive or exclusive, but serious issues may include:

- Charges / investigations of allegations of rape,
- Charges / investigations of other sexual related incidents,
- Charges / investigations of violent attacks,
- Charges of a driver causing a serious motoring accidents involving loss of life or serious injury,
- Charges of dangerous driving including driving under the influence of alcohol or drugs,
- Medical related issue(s) which means the driver cannot meet the DVLA Group 2 vocational licence standard.

In order to ensure that any Police investigation is not be put in jeopardy, the hearing under this driver licence review process, will be held in confidential / private session.

2. Reports of a serious issue received from a member of the public will always be referred to the Police and be recorded by the Council. Unless it is considered appropriate on an individual case to do so, no action will be taken in respect of these reports until such time as they are verified by the Police. Less serious matters may be referred to the General Licensing Committee for determination.

3. Following receipt of serious information, relating to a licensed driver, the following steps will be followed.

4. Driver(s) will be contacted by an Officer of the Council's Licensing Section, advised of the allegation, and requested to attend a licence review meeting at the Council Offices within a period of 24 to 48 hours (excludes weekends and bank holidays) from the initial contact in order to put forward their case. The driver will be advised that the process may result in the immediate suspension or revocation of their driver licence. In addition, the driver will be advised that if they refuse to attend the review meeting the matter will be dealt with in their absence and the decision making process will not be delayed.

5. If the information relates to more than one driver each driver shall be dealt with independently of any other. Every effort will be made to contact the driver whether by telephone call, voice mail, text, home visit (always by two Council Officers and if relevant in the presence of a Police Officer) or by a combination of methods. All attempts to communicate with the driver will be documented.

6. Prior to the review hearing being held any relevant comments made by the driver in the presence of Council Officers will be documented and will be presented to the meeting.

- 7.** If a driver refuses to attend the review hearing the matter will be dealt with in their absence and the decision making process will not be delayed.
- 8.** The review hearing will be documented and all reasons and decisions will be recorded in writing.
- 9.** Prior to the review hearing a Council Officer will advise the Chair and Vice Chair of the General Licensing Committee that a review hearing, under this rapid response procedure, is to take place.
- 10.** The review hearing will be attended by the following:
 - The Public Protection Service Manger (or his/her nominated representative).
 - A Licensing Officer or Licensing Compliance Officer.
 - A representative of the Council's Legal Services Department, if appropriate.
 - The driver and any representative (e.g. legal representative) he/she may wish to accompany him/her.
- 11.** A Licensing Officer, or Licensing Compliance Officer, shall notify the meeting of any pertinent details including details of the information received and any comments made by the driver.
- 12.** The driver shall be given every opportunity to explain any relevant circumstances.
- 13.** Notes will be made regarding the reason for non-attendance of any party.
- 14.** Once the review panel have heard from all parties to the hearing, and had answers to their questions, the panel will go into private session, without the driver and his/her representative, in order for the Public Protection Service Manager to make his/her decision on status of the driver licence.
- 15.** At the conclusion of the process, the driver will be served with a notice immediately advising him/her of the review decision – the notice will be served by the Public Protection Service Manger (or his/her nominated representative). In the case of a decision to suspend or revoke a licence the notice will indicate that the suspension or revocation has immediate effect. The notice will advise the driver of the appeal rights within 21 days of being served with the notice. The notice will also indicate the process for the driver handing in his/her driver's badge.
- 16.** Where a driver's licence has been revoked through this procedure, a new licence application will only be considered where there has been a change of circumstances. Determination of a new application will take account of the period of the licence remaining when it was revoked and dependant on the requirements in respect of medicals, DBS and DVLA checks, etc.
- 16.** All details pertaining to the allegation will be excluded from the public domain, and the review hearing will be held in private/confidential session, as the matter may be subject to formal legal procedures at a later stage.
- 17.** A summary of each decision, made under this rapid response procedure, will be reported to the next available meeting of the Council's General Licensing Committee.

EAST LINDSEY DISTRICT COUNCIL

Report of: Councillor Martin Foster
Executive Member for Operational Services

Report to:	Leader of the Council
Date:	2nd April 2020
Subject:	Supplementary Waste Collection Function

Decision Proposal:	Leader non key decision <i>To approve the delegation of the executive function for the provision of a supplementary waste collection in Mablethorpe to Lincolnshire County Council</i>
Relevant Executive Member:	<i>Councillor Foster, Portfolio Holder for Operational Services</i>
Report author:	Victoria Burgess, victoria.burgess@e-lindsey.gov.uk , 01507 613214 Date: 27 January 2020
Reviewed by:	Alison Penn, alison.penn@e-lindsey.gov.uk Date:
Signed off by:	Alison Penn, alison.penn@e-lindsey.gov.uk , Date: 3 March 2020
Approved for publication	Cllr Foster Date: 4 March 2020
Does the report identify information that is exempt from publication	No

SUMMARY

Lincolnshire County Council has requested support from East Lindsey District Council to enable their current provision of a supplementary waste collection in Mablethorpe to continue. To comply with the Environment Agency's Regulatory

Position Statement 223, East Lindsey District Council, as Waste Collection Authority, is required to delegate their waste collection function to the County Council for the provision of this service at this location.

RECOMMENDATION

1. To approve the delegation of the executive function for the provision of a supplementary waste collection in Mablethorpe to Lincolnshire County Council, at the location set out in Appendix A.
2. To delegate the signing of the agreement with Lincolnshire County Council to Assistant Director (place).

REASON: To enable Lincolnshire County Council to continue to provide a supplementary waste collection service in the Mablethorpe area.

1. BACKGROUND TO REPORT

- 1.1 The Environmental Protection Act 1990 set outs the duty of local authorities to arrange for the collection and disposal of household waste. As Waste Collection Authority, East Lindsey District Council is required to arrange the collection of waste and recycling from households. As Waste Disposal Authority, Lincolnshire County Council is required to arrange the disposal of the household waste and recycling collected.
- 1.2 Lincolnshire County Council provides a supplementary household waste collection service to residents living in the Mablethorpe area, in lieu of a Household Waste Recycling Centre. This supplementary service enables residents to dispose of excess household waste and bulky items at the Mablethorpe Industrial Estate on a Saturday.
- 1.3 The provision of the supplementary collection is regulated by the Environment Agency's Regulatory Position Statement (RPS) 223, which sets out the requirements for the provision of temporary community waste collection points.
- 1.4 This RPS 223 allows waste collection authorities to place temporary skips and containers in their communities to collect householders' waste without an environmental permit. The location of the supplementary service provided by LCC is not a permitted piece of land and therefore this RPS applies.
- 1.5 As the RPS only applies to waste collection authorities, or contracted providers working for a waste collection authority, and to enable LCC to continue providing this service in Mablethorpe. East Lindsey District Council as waste collection authority is required to delegate this particular waste collection function to the County Council.
- 1.6 The County Council proposes to continue providing this service at the end of the highway on Mablethorpe Industrial Estate where this service has been

operating for a number of years. Appendix A prescribes the boundary of the area where the collection will take place.

2. OTHER OPTIONS CONSIDERED

- 2.1 Not to delegate the function, although this will result in the County Council being unable to provide this service.

3. RESOURCE IMPLICATIONS

- 3.1 There are no resource implications for East Lindsey District Council.

4. RISK AND MITIGATION

- 4.1 Risk has been considered as part of this report and any specific risks are included in the table below:

Category Risk – State if high medium or low	Action / Controls
High. As the County Council contracts the provision of the supplementary service out to a private contractor, there is a risk the District Council could incur liability for the contractor's actions.	To mitigate this risk Lincolnshire County Council has agreed to tender a contract which will include a clause to indemnify East Lindsey District Council against any liability within the contract documents for their subcontractor.

5. ISSUES AND MATTERS TO TAKE INTO ACCOUNT ARISING FROM KEY CORPORATE CONSIDERATIONS (EQUALITY, SAFEGUARDING, DEPRIVATION, HEALTH & SAFETY etc.)

- 5.1 Health and Safety implications as identified in the risk category above (para 4.1) will need to be mitigated by the County Council, and their Head of Waste has confirmed that they will provide East Lindsey District Council with indemnity against any liability for health and safety risk from contacting out the service provision. The County Council requires health and safety risk to be assessed through their usual contract procurement and contract management arrangements.

6. COUNCILLOR COMMENTS

- 6.1 It is important that we work together with our partners where we can to support the delivery of services to residents. Delegating this function enables

Lincolnshire County Council to continue to provide an important service to the Mablethorpe area.

7. CARBON REDUCTION IMPACT/IMPLICATIONS

- 7.1 Providing a supplementary service in Mablethorpe prevents residents making individual car journeys to Louth or Skegness Household Waste Recycling Centres.

8. CRIME AND DISORDER IMPLICATIONS

- 8.1 There are none identified.

9. FINANCIAL CONSIDERATIONS/IMPLICATIONS

- 9.1 There are none identified.

10. LEGAL CONSIDERATIONS/IMPLICATIONS

- 10.1 None – providing the County Council indemnify the district council as set out in 4.1

11. APPENDICES

- 11.1 Appendix A – Boundary of collection area

12. BACKGROUND PAPERS

- 12.1 n/a

Appendix A

Drawing Status: PRELIMINARY

Revision	Description	Drawn By	Approved By	Approval Date

Amendment Details

Drawn by: **DJB** 1st Approval by: **MAR**
 Date: 21/02/20 Date: 21/02/20

Client:
WASTE SERVICES

Description:
**MABLETHORPE SUPPLEMENTRY SERVICE
 AREA OF HIGHWAY FOR USE**

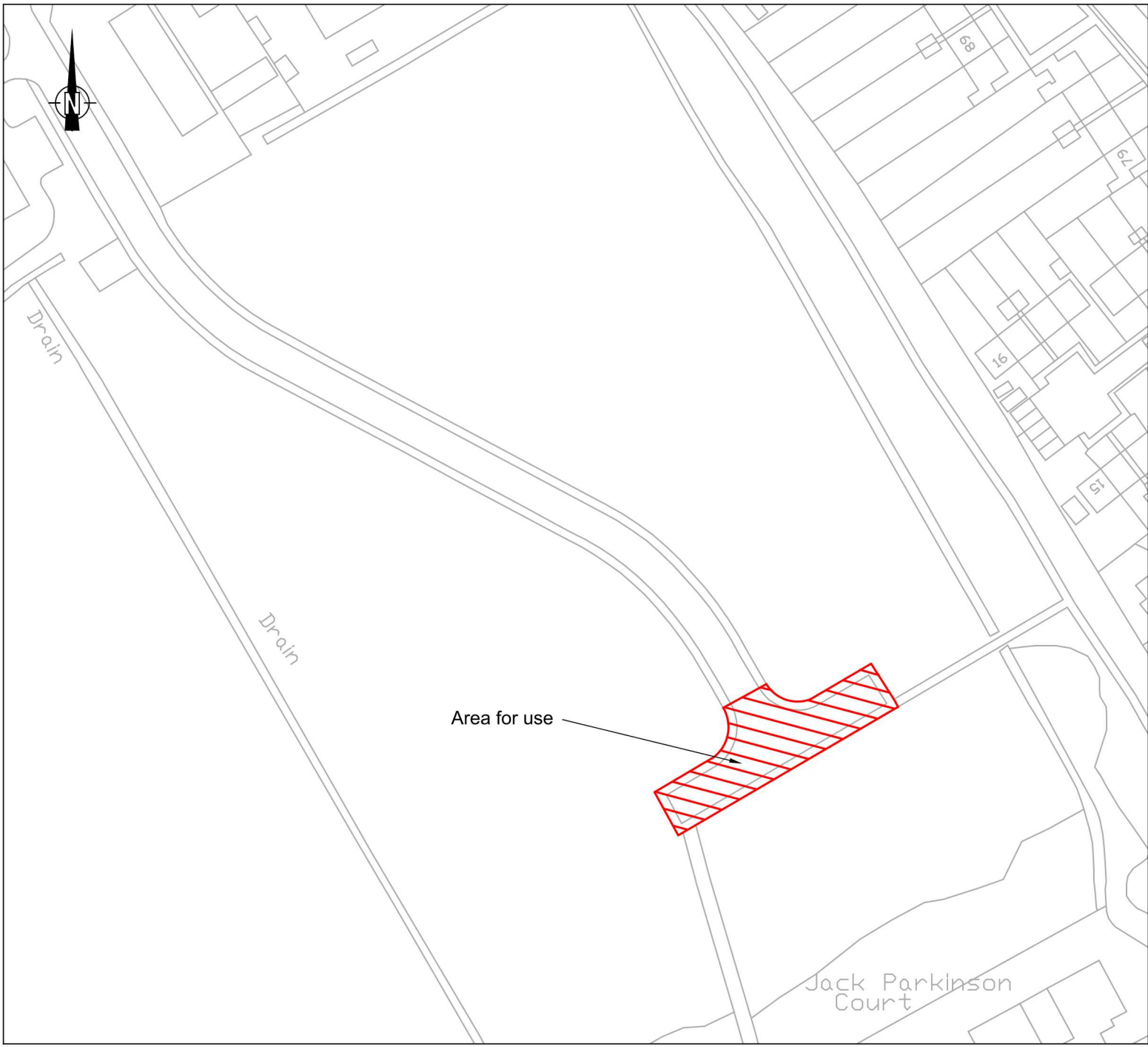
Drawing Number: **E/ /** Revision Number: (revision)

Scale: Primary: **1:1250** (Do not scale from this drawing)
 (@A4) Secondary:

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Lincolnshire
 COUNTY COUNCIL

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