

Subject: Implementation of Fit and Proper Test for managers of Park Home Sites

Report to: ELT 15TH September 2021
Licensing Committee 20th September 2021

Report by James Wilson, Head of Environmental Services

SUMMARY

This report details the new legal requirement for local authorities to maintain a “Fit and Proper Persons” register and how this will be implemented by the Council.

It is recommended that Members of the Licensing Committee approve the Fit and Proper Persons Determination Policy included in Appendix, along with the fees schedule contained within.

1. BACKGROUND

- 1.1 The Council currently licences 12 residential mobile park home sites, containing a total of 345 units, across the Borough. These sites permit occupancy all year round.
- 1.2 The Mobile Homes (Requirement for Manager of Site to be a Fit and Proper Person) (England) Regulations 2020 introduced a fit and proper person test for mobile site owners or the person appointed to manage the site, unless exempted by the Regulations.
- 1.3 This brings park home sites in line with large Houses in Multiple Occupation and Selectively Licensed dwellings in proactively seeking to ensure that individuals having day-to-day responsibility of the site are suitably qualified to do so.

2. INTRODUCTION

- 2.1 The Mobile Homes Act 2013 made significant changes to the local authority site licensing regime, providing authorities with new statutory enforcement powers. Section 8 of the Act provides the Secretary of State with the power to introduce a requirement for park home sites to be managed by a fit and proper person. This sets out the overarching framework for a fit and proper persons test, the processes that the local authority will use and a register of fit and proper site managers.

- 2.2 The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 sets out a framework for a fit and proper person test function. It is a mandatory requirement for site owners to submit an application to be assessed as a fit and proper person. The Regulations set out the prescribed criteria a local authority must consider when determining a person's fitness to manage a site, in addition to discretionary powers.
- 2.3 The Fit and Proper Person Determination Policy (Appendix 1) has been drafted to take account of the Regulations and draft non-statutory guidance on the fit and proper persons test Regulations by the Ministry of Housing, Communities and Local Government (MHCLG)
- 2.4 The Regulations allow local authorities to charge fees in respect of the new fit and proper persons test function and must prepare and publish a fees policy before they can charge a fee.

3. Process

- 3.1 Every site owner falling under the Regulations must apply to the Council for the relevant person (either themselves or the site manager) to be included on a register of fit and proper persons. A site owner may only apply if they hold or have applied for a site licence for that site. The same requirements apply where the owner or the site manager is not an individual, such as a park owned or managed by a company.
- 3.2 Those applying to be on the register must show that they are able to secure the proper management of the site, demonstrating, among other things:
- A history of compliance with the site licence
 - A good history of maintenance of the site
 - That they have a sufficient level of competence to manage the site
 - That they have not been convicted of a number of offences the Regulations may deem relevant

The Council will consider the application in order to satisfy itself that the relevant person is fit and proper to manage the site.

- 3.2 Following a successful application a person may be added to the fit and proper register for a period the Council deems appropriate, but for no longer than 5 years.
- 3.3 The Council may also grant application subject to condition(s) which may include a condition relating to the payment of an annual fee.
- 3.4 If the Council determines that the relevant person does not meet its requirements and is unable to grant the applications (with or without conditions), it must refuse to grant the application to that person.

3.5 Where a relevant person fails an assessment and the site owner is unable to identify and appoint a suitable alternative manager who must also undergo the fit and proper person assessment, the Council could appoint a person to manage the site, with the consent of the site owner.

3.6 It is an offence, punishable on conviction of an unlimited fine, for a site owner to

- cause or permit land to be operated as park home site unless they or the person appointed by them to manage the site is a fit and proper person to manage the site.
- provide false or misleading information or fail to provide information in an application
- fail to comply with a requirement set as a condition of the local authority's decision to include the person on the register.

4. Licence Fees

The Regulations allow for the recovery of costs incurred by the Council in compiling and maintaining the register. Where a local authority does intend to charge fees, it must prepare and publish a fee policy which can be revised from time to time. The proposed fees are as follows:

Single application - £ 145

Additional sites (same applicant) – £66.27

Full Calculations of costs can be found in Appendix 1

5. Anticipated Outcomes

5.1 Increased accountability for park home site owners leading to improved standards of site management.

6. Legal Outcomes

6.1 The Regulations place a legal requirement on local authorities to establish and maintain an up to date a register of fit and proper persons to manage park homes in their district. It is however, at the Council's discretion whether they charge applicants for this.

7. Financial Implications

7.1 The administration costs incurred by the Council in establishing and maintaining a fit and proper persons register are included in Appendix 1.

- 7.2 These costs have been calculated with reference to the Ministry of Housing, Communities and Local Government document “Mobile homes: a guide for local authorities on setting fees for the fit and proper person test”, June 4 2021.
- 7.3 Application fees should be fair and transparent so that anyone required to pay can know what they will or are being charged for. Fees should only cover the costs incurred by the Council in carrying out their functions under the Regulations.
- 7.4 The Government’s intention is that the cost of administering the Fit and Proper Persons Test regime will be met from fee income.

8 NEXT STEPS

- 8.1 Preliminary discussions have been held with all site owners, advising of the new legal requirements. Further information on the scheme, along with application forms are available online on the Council’s website, paper copies available on request.

9. RECOMMENDATION

- 9.1 That Members approve the Fit and Proper Persons Determination policy and fees schedule contained within

Background Papers:

- The Mobile Homes (Requirement for Manager of Site to be a Fit and Proper Person) (England) Regulations 2020
<https://www.legislation.gov.uk/ukdsi/2020/9780348209556/contents>
- Ministry of Housing, Communities and Local Government - Mobile homes: a guide for local authorities on setting fees for the fit and proper person test.
<https://www.gov.uk/government/publications/mobile-homes-fit-and-proper-person-test-guidance-for-local-authorities/mobile-homes-a-guide-for-local-authorities-on-the-fit-and-proper-person-test>



The Mobile Homes (Requirement for Manager of Site to be a Fit and Proper Person) (England) Regulations 2020

Fit and Proper Person Determination Policy

1. Introduction

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, ("the Regulations") require the manager of a Relevant Protected Site (RSP) to be a Fit and Proper Person. A RSP is a site, which requires a licence, and which is not solely for holiday purposes or is otherwise not capable of being used all year round. The fit and proper person requirement

Local authorities are required to compile and maintain a register of fit and proper persons managing RSPs in their area (subject to exemptions). The purpose of the fit and proper person test is to improve the standards of park home site management.

A local authority must be satisfied that the site owner "is a fit and proper person to manage the site" or, if the owner does not manage the site, "that a person appointed" to do so by the site owner "is a fit and proper person to do so" or has, with the site owner's consent, "appointed a person to manage the site."

Where a site owner or their manager fails the fit and proper person test, and they are unable to identify and appoint a suitable alternative manager, who must pass the fit and proper person assessment, the local authority can instead appoint a person to manage the site, but only with the consent of the site owner.

Additionally, it provides the safeguard that such individuals will not pose a risk to the welfare or safety of persons occupying mobile homes on the site i.e. mobile homeowners.

This policy sets out how applications will be looked at and determined under the Regulations. Great Yarmouth Borough Council will consider each case on its own merits. Where there are exceptional, clear and compelling reasons to deviate from this Policy, the Council will consider doing so and will record the reasons for any deviation.

2. Factors to be considered

When conducting the fit and proper person assessment on the Relevant/Responsible Person, the Council will consider the following points:

- Is the individual able to conduct effective management of the site

This includes, but is not limited to, securing compliance with the site licence and the long-term maintenance of the site.

The Council will have regard to:

- (i) whether the person has a sufficient level of competence to manage the site;
- (ii) the management structure and funding arrangements for the site or
- (iii) the proposed management structure and funding arrangements.

(a) Competence to manage the site

The Council will review the competency of the appointed individual. The individual must have sufficient experience in site management, or have received sufficient training, and be fully aware of the relevant law as well as health and safety requirements.

(b) The management structure and funding arrangements for the site

The Council will consider whether relevant management structures are in place and whether they are adequate to ensure effective management of the site. The Council will want to see that the applicant has a robust management plan, which should address the following issues:

- the pitch fee payment
- proximity of the manager to the site
- manager's contact details for residents (including out of office and emergency contact details)
- the complaints procedure
- maintenance
- staffing
- refuse removal.

(c) The proposed management structure and funding arrangements in place for managing the site

The Council will consider whether the applicant has sufficient funds (or has access to sufficient funds) to manage the site and comply with licence obligations. Evidence of these funds should be readily available.

The Council will carefully consider instances where funding is through a third party

(including an associated company) and will be wary if the applicant does not disclose to it such information as it needs to make an informed judgement on financial viability.

3. Personal information relating to the Fit and Proper Person

The Applicant must provide a criminal record check for the Relevant/Responsible Person, dated no more than 6 months prior to the application.

In addition, the Council will carry out checks with external organisations, other regulatory bodies and other council departments.

Considerations that are relevant to the fit and Proper Person assessment are whether the relevant person(s) -

- a) has committed any offence involving fraud or other dishonesty, violence, arson or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements);
- b) has contravened any provision of the law relating to housing, caravan sites, mobile homes, public health, planning or environmental health or of landlord and tenant law;
- c) has contravened any provision of the Equality Act 2010 in, or in connection with, the carrying on of any business;
- d) has harassed any person in relation to Section 3 of the Caravan Sites Act 1968 as amended or otherwise;
- e) is or has been within the past 10 years, personally insolvent
- f) is or has been within the past 10 years, disqualified from acting as a company director;
- g) has the right to work in the United Kingdom

When considering if there is evidence of harassing behaviour the Council will rely on convictions by the courts as evidence of such behaviour.

Where the Council has records of previous substantiated harassment complaints made against a site owner or their manager it will take these into consideration in the fit and proper person determination. Such complaints may identify further potential risks and provide an indication of potential underlying problems with the management of the site or the site owner's lack of experience/skills in dealing with customers. The Council will consider addressing any underlying issues by attaching conditions to the individual's entry on the register.

4. Other Information to be taken into consideration

The Fit and Proper Person Test is a broad concept and in addition, the council will consider the conduct of any person associated or formerly associated with the relevant person

(whether on a personal, work or other basis) as part of fit and proper person assessment.

The Council will establish whether an individual is considered to be an associate of the relevant person and then whether their conduct is relevant to the application. A relevant associate could be any individual who may have played a part, directly or indirectly, in a decision or action, which has had an impact on residents' rights, or the quiet enjoyment of their homes.

5. Decisions, notification and rights of appeal

The Council will decide on the application in a timely and practicable manner and either:

Where the decision is to grant the application unconditionally and include the relevant person on the register for 5 years, serve a final decision notice on the applicant; or
Otherwise, serve a preliminary decision notice on the applicant.

Granting the application unconditionally

Where the Council is satisfied that the applicant meets the fit and proper person test unconditionally, it will include the applicant on the register for 5 years. The Council will issue a final decision notice to the applicant to inform them of its decision.

The final decision notice will include:

- a) the date the final decision notice is served;
- b) the final decision;
- c) the reasons for the decision;
- d) when the decision is to take effect;
- e) information about:
 - (i) the right of appeal to the First Tier Tribunal; and
 - (ii) the period within which an appeal may be made.

Granting the application subject to condition(s).

The fit and proper person test is aimed at ensuring that the person managing the site is competent and so any conditions imposed will relate directly to the person's ability to secure the proper management of the site. The Council will not impose conditions relating to breaches of legislation contained in paragraph 5.

The Council will issue a preliminary notice to the applicant to inform them of its decision. The Council will consider the information in paragraph 5 a) to g) together with all the other information available, when reaching their preliminary decision.

Refusing the application

Should the Council determine that the applicant does not meet the requirements, and attaching conditions would not be appropriate, the Council can refuse to grant the application.

Final Decision Notice

The Final Decision Notice will set out:

- a) the date the final decision notice is served
- b) the final decision;
- c) the reasons for it;
- d) when the decision is to take effect;
- e) information about:
- f) the right of appeal to the First Tier Tribunal; and
- g) the period within which an appeal may be made.

Preliminary decision notice

The preliminary decision notice will set out:

- a) the date the preliminary decision notice is served;
- b) the preliminary decision;
- c) the reasons for it;
- d) the date it is proposed that the final decision will have effect;
- e) information about the right to make written representations;
- f) where the preliminary decision is to refuse the application, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the Regulations; and
- g) where the preliminary decision is to grant the application subject to conditions, the consequences of failing to comply with any condition.

6. Right to make a representation

An applicant who receives a preliminary decision notice will have 28 days in which to make representations to the Council. The 28-day period begins with the day after the day on which the notice was served.

The Council will as soon as reasonably practicable, after the end of the period allowed for making representations, make a final decision and serve the decision notice on the applicant.

The final decision notice will set out:

- a) the date the final decision notice is served;
- b) the final decision;
- c) the reasons for it;
- d) when the decision is to take effect;

- e) information about the right of appeal and the period within which an appeal may be made where the decision is to refuse the application, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the regulations; and
- f) where the decision is to grant the application subject to conditions, the consequences of failing to comply with any condition.

7. Appeals

The applicant can decide to appeal the decision by making an application to the First-tier Tribunal (Property Chamber) ("the tribunal") within specific timeframes set by the tribunal. The applicant is permitted to appeal against any decisions served by the Council. These could include:

- a) including the relevant person on the register for an effective period of less than 5 years;
- b) including the relevant person on the register subject to conditions; and
- c) rejecting the application.

Where an applicant accepts the Council's decision not to include the person originally stated in the application on the register, they will be required to seek alternative management arrangements to comply with the fit and proper person requirement. If they fail to do so they will be committing an offence.

An appellant will not be able to claim compensation for losses incurred pending the outcome of an appeal.

8. Removal from Register/Variation of Conditions

If, after a person is included in the register and new evidence relevant to the person's inclusion becomes available, the Council may decide to:

- a) remove the person from the register;
- b) impose a condition on the inclusion of the person in the register (whether or not there are conditions already imposed;
- c) vary a condition; or
- d) remove a condition.

9. Notice of Proposed Action

Before taking action specified in paragraph 10. the Council will serve a notice on the site owner/occupier. The Notice will clearly state:

- a) the date the notice of proposed action is served;

- b) the action the Council proposes to take;
- c) the reasons for it;
- d) the date it is proposed that the Council will take the action;
- e) information about the right to make written representations;
- f) where the proposed action requires the removal of a person from the register, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the regulations; and
- g) where the proposed action is to impose a condition on the inclusion of a person in the register or to vary a condition, the consequences of failing to comply with said conditions.

10. Notice of Action Taken

Where a notice of proposed action is given, the occupier will have 28 days, starting from the day after the notice is served, in which to make representations.

The Council will, as soon as reasonably practicable after the end of the 28-day period, decide whether to carry out the proposed action.

Where the Council decides to take the action, the Council will serve a further notice on the occupier, indicating the action that has been taken, within the period of 5 working days beginning with the day after the day on which the action was taken.

The Notice of Action will set out—

- a) the date the notice of action is served;
- b) the fact that they have taken the action;
- c) the reasons for doing so;
- d) the date the action was taken;
- e) information about the right of appeal and the period within which an appeal may be made;
- f) where the action is to remove a person from the register, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of regulations; and
- g) where the action is to impose a condition on the inclusion of a person in the register or to vary a condition, the consequences of failing to comply with any condition.

11. Appeals

A person on whom a notice of action is served may appeal to the First-tier Tribunal against:

- a) any decision to remove the relevant person from the register;
- b) any decision to impose a condition on the inclusion of the relevant person in

- the register; and
- c) any decision to vary a condition.

No compensation may be claimed for loss suffered, pending the outcome of the appeal, in consequence of the Council:

- a) making a final decision; or
- b) taking an action mentioned in paragraph number paragraph 10. (a) (b) (c)

12. Fit and Proper Person Register

The Council will set up and maintain a register of persons who they are satisfied are fit and proper persons to manage a site in their area. This register will be open to inspection by the public during normal office hours. This register will also be published online.

The register will provide a record of the outcome (as discussed above) of the fit and proper person tests the Council have carried out for sites. The register will include the following:

- a) the name and business contact details of the person;
- b) the name and address of the relevant protected site to which the application relates;
- c) the status of the person (site owner or manager of the site);
- d) the dates of the first and last day of the period for which the person's inclusion in the register has effect;
- e) whether any condition is attached to the person's inclusion in the register; and
- f) where any condition is attached to the person's inclusion in the register—
 - (i) the number of any such conditions;
 - (ii) the dates of the first and last day of the period for which any such condition applies (if applicable); and
 - (iii) the date any condition is varied or satisfied (if applicable).

Where a person has met the fit and proper person test, the register will give details of that person and of the site, including decisions made on how long a person's inclusion is for, up to a maximum of 5 years.

In order to comply with the fit and proper person requirement a site owner must at least two months before the period (e.g. 5 years) comes to an end submit a new application for the person (or alternative) to be included in the register.

Where there are rejected applications, the following information must be included in the register:

- a) the name and address of the site to which the application relates;
- b) that an application in respect of the site has been rejected; and

- c) the date on which the application was rejected.

Details of the rejected application will remain on the register until a successful fit and proper person application is made in respect of the owner or manager of the site.

It must be noted that the name of the rejected applicant will not be included on the register. The Council will however be able to consider requests for further information about the entry on the register, for example, the details of the specific conditions attached and any additional information, on a case by case basis and in accordance with data protection legislation.

Where the Council has, with the site owner's consent, appointed a person to manage the site, the Council will include the following information:

- a) the name and business contact details of the person;
- b) the name and address of the site which the person has been appointed to manage;
- c) the status of the person;
- d) the dates of the first and last day of the period for which the person's inclusion in the register has effect;
- e) whether any condition is attached to the person's inclusion in the register; and
- f) where any condition is attached to the person's inclusion in the register—
 - (i) the number of any such conditions;
 - (ii) the dates of the first and last day of the period for which any such condition applies (if applicable); and
 - (iii) the date any condition is varied or satisfied (if applicable).

13. Policy review

- 13.1 The Regulations do not impose a mandatory review period for fees policies. It is suggested that this review takes place every 3 years.

Fees policy
Single Application

Processing	Time (minutes)	Hourly Rate (£)	Total (£)
Pre-application advice	30	31.50	15.75
Receipt of application and recording on Civica APP	30	31.50	15.75
Check application is full and proper – completed, signed, fee paid	30	31.50	15.75
Process fee and send receipt to owner	15	13.10	3.27
Review application and make enquiries re FPP documents and declarations (inc management & finances)	90	31.50	47.25
Update Civica APP	15	31.50	7.88
Establish any conditions applicable	30	31.50	15.75
Grant application (Final Notice) or serve Preliminary Notice	30	31.50	15.75
Update Civica APP	15	31.50	7.88
Total			145

Additional site fee (same applicant)

Processing	Time (minutes)	Hourly Rate (£)	Total (£)
Receipt of application and recording on Civica APP	30	31.50	15.75
Process fee and send receipt to owner	15	13.10	3.27
Update Civica APP	15	31.50	7.88
Establish any conditions applicable	30	31.50	15.75
Grant application (Final Notice) or serve Preliminary Notice	30	31.50	15.75
Update Civica APP	15	31.50	7.88
Total			66.27

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