

SPECIAL MEETING OF THE REGULATORY COMMITTEE

27 SEPTEMBER 2021

MOBILE HOMES FIT AND PROPER PERSON FEE CHARGE AND POLICIES

Cabinet Member(s): Cllr Dennis Knowles

Responsible Officer: Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing (Chair East & Mid Devon CSP)

Reason for Report and Recommendation: The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 (“the Regulations”) introduced a Fit and Proper Person test for mobile home site owners or the person appointed to manage the site, unless exempted by the Regulations. From 1 July 2021 until 1 October 2021 protected sites, operated on a commercial basis, must be shown to be being managed by a fit and proper person. This report brings forward a new fee and determination policy to allow the Council to implement these regulations.

Recommendation: That the **Special Regulatory Committee recommend to Council the following:**

- 1. Adopt and agree the Mobile Homes Fit and Proper Person Fee Policy contained in Annex 1 of this report**
- 2. Adopt and agree the Mobile Homes Fit and Proper Person Fee Calculation contained Annex 2 of this report**
- 3. Adopt and agree the Mobile Homes Fit and Proper Person Determination Policy contained in Annex 3 of this report**
- 4. Delegate Authority to the Corporate Manager for Public Health, Regulation and Housing for the administration, including setting of fees, and enforcement of any provisions under The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020. These delegations can then be sub-delegated to relevant officers.**

Financial Implications: There are no financial implications as a result of this activity. The fee is legally calculated to ensure that the provision is cost neutral. The fee must be transparent and reasonable to only cover the cost of the application and determination for the Fit and Proper Person test. The fee will be reviewed annually to ensure it continues to remain cost neutral for the Council. Further information contained within the report.

Budget and Policy Framework: Budget and financial considerations are set out above. Any cost of delivering this element of the licensing service within Public Health will be balanced by fee income.

The policies set out are consistent with other adopted licensing policies and written specifically to ensure compliance with the relevant legislation (see below). Policies are also consistent with the adopted Enforcement Policy for the Council.

Legal Implications: Matters set out herein are determined by the Regulations” which introduce a Fit and Proper Person test for mobile home site owners or the person appointed to manage the site.

Under this legislation, the Council must have the fee policy documents in place to be able to enforce the Regulations. The Council could be challenged if the policy and associated documents are not in place to allow site managers to apply for the Fit and Proper Person test by the deadline of 30 September 2021.

Risk Assessment: Failing to introduce this policy puts the Council at risk of not being able to fulfil a statutory duty. Government guidance was published in June 2021 and the legislation requires applications to be submitted between 1 July and 30 September 2021 for existing sites. Not having the policy in place has a reputational risk for the Council as site managers will not be able to comply.

Equality Impact Assessment: An EIA has not been undertaken for this report. The policies set out herein are determined purely by the provisions of the legislation set out above and do not discriminate against any relevant persons with protected characteristics. Matters in relation to fee setting also follow the relevant legal provision and are set on a cost-neutral basis.

Relationship to Corporate Plan: This report and the annexes attached link directly to the Licensing Authority functions of the Council with the primary aim of protecting public safety and ensuring the well-being of our community and licensed service users. It therefore contributes to the priority of Community within the Corporate Plan.

Impact on Climate Change: None directly arising from the report.

1.0 Introduction and legislative background

1.1 The Regulations” introduced a Fit and Proper Person Test for mobile home site owners or the person appointed to manage the site, unless exempted by the Regulations. The Regulations apply to all relevant protected sites. These include both “residential parks”, which are used exclusively residentially, and “mixed use parks”, which are used for both residential and holiday purposes. Non-commercial family-occupied sites are exempt from the regulations requiring a fit and proper person test.

1.2 It is important to highlight that from 1 July 2021 until 1 October 2021 protected sites, operated on a commercial basis, must be shown to be being managed by a fit and proper person.

1.3 The attached policies and fee will enable the Council's Public Health Licensing team to implement the new Regulations to enable site owners, or the person appointed to manage the site, to make their applications to be assessed as fit and proper and included on the public register of fit and proper persons managed by the Council. The purpose of the Fit and Proper Person Test is to protect residents living in protected sites park homes from rogue landlords; poor maintenance and mismanagement of sites. We already undertake fit and proper tests on landlords and managers of houses in multiple occupation (HMOs).

2.0 **Definition of a fit and proper person**

2.1 The applicant (owner or manager) wishing to be included on the register will have to show that there are suitable financial and management arrangements in place for the site.

2.2 They must provide information relating to their conduct in relation to any of the following:

- Offences relating to fraud, dishonesty, violence, arson or drugs or listed in schedule 3 of the Sexual Offences Act 2003
- Contraventions of law in relation to: housing, caravan sites, mobile homes, public health, planning or environmental health or landlord and tenant law
- Contraventions of law in relation to the Equality Act 2010, or in connection with the carrying out of any business
- Harassment of any person in connection with the carrying out of any business
- Insolvency within the last 10 years
- Disqualification from acting as a company director within the last 10 years
- Having the right to work in the UK.

3.0 **Sites affected by the change**

3.1 This legislation only applies to park home sites, which operate on a commercial basis, where units are sold or rented to residents. These are "residential parks", which are used exclusively residentially, and "mixed use parks", which are used for both residential and holiday purposes.

3.2 Units which are only occupied by the site owner or members of the site owner's family do not need to apply. If park homes are rented out to non-family members, then the owner or site manager will need to apply to be included on the register. The law does not cover touring or holiday caravan sites.

4.0 **The fit and proper person application process**

- 4.1 Under the legislation the fit and proper person must be the person with day-to-day responsibility for managing a site.
- 4.2 That is the site owner or a person appointed to undertake managing the site on the owner's behalf.
- 4.3 Anyone applying for a new site licence, or the transfer of a site licence to a new owner, will need to apply to have themselves or the site manager included on the fit and proper person register held by the Council and pay a fee.
- 4.4 Applications must be received between the 1st July 2021 and by midnight of 30 September 2021 (inclusive) to be assessed as a Fit and Proper Person.
- 4.5 It is a criminal offence if the owner or manager operating a site fails to comply with the Fit and Proper Person Test. If found guilty at a Magistrates' Court they could be liable to pay up to an unlimited fine (level 5).
- 4.6 The applicant seeking to be assessed as a Fit and Proper Person and entered on the register will need a basic DBS certificate (dated no more than 6 months before the date of the application). This must be included with the application. The DBS certificate must be from an approved supplier.
- 4.7 An application and guidance will be sent to the applicant including how to arrange a DBS check. The applicant will be required to carry the cost of the application and pay the Council the published fee. Further information is in Annex 3, the Mobile Homes Fit and Proper Person Determination Policy and the Guidance for Site Owners (attached in Annex 4 for reference).
- 4.8 Once a valid application has been received the Licensing team will determine the application within a timely and practicable manner and notify the applicant of the result in writing.
- 4.9 The application can be approved as follows:
- Unconditional – no conditions attached
 - Approved with conditions – specific conditions may be required
 - On condition of appointment of a manager determined by the Council who is authorised as Fit and Proper

4.10 More information in respect of the Fit and Proper Persons Test, sites impacted and the application process is contained in Annex 3 – the Mobile Homes Fit and Proper Person Determination Policy.

5.0 Fees

5.1 The cost of applying the Fit and Proper Person test must be cost neutral for the Council. Applying to be assessed as a Fit and Proper Person and for inclusion on the register carries an application fee of £304.18 for the 2021/22 period. The fee is calculated by assessing the steps required by the Licensing team to process the application, how long each step takes and the hourly cost of the officer undertaking the task. A full breakdown of how the fee has been calculated is shown in Annex 2 – Mobile Homes Fit and Proper Person Fee Calculation and the policy for the fee calculation is set out in detail in Annex 1 - Mobile Homes Fit and Proper Person Fee Policy.

5.2 The fee will be reviewed on an annual basis. As this process is new the proposed fee is an estimate of the time this is likely to take. The next review will be able to provide a more accurate view of the time taken to process these applications. The fee will then be updated accordingly.

6.0 The proposed delegated powers will allow for the service to administer and enforce these statutory provisions going forward and to update fees annually as set out above.

7.0 Publication of the Register

7.1 All applicants for the Fit and Proper Person Test must be entered onto a public register. The register must be published on the Council's website. The register must be set out in a standard format as required under the Regulations. A copy must be available to any person on request.

7.2 The register will be published from 1 October 2021.

8.0 Recommendations

8.1 That the Regulatory Committee recommend to Council the following:

1. Adopt and agree the Mobile Homes Fit and Proper Person Fee Policy contained in Annex 1 of this report
2. Adopt and agree the Mobile Homes Fit and Proper Person Fee Calculation contained in Annex 2 of this report
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4. Delegate Authority to the Corporate Manager for Public Health, Regulation and Housing for the administration, including setting of fees, and enforcement of any provisions under The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020. These delegations can then be sub-delegated to relevant officers.

Contact for more Information: Jo Pope, Commercial Team Leader (secondment) jpoppe@middevon.gov.uk or Simon Newcombe, Corporate Manager for Public Health, Regulation and Housing snewcombe@middevon.gov.uk.

Circulation of the Report:

Cabinet Member for Community Well Being (Cllr Dennis Knowles)
Members of the Regulatory Committee
All Leadership Team
All Corporate Management Team
All Operations Managers

List of Background Papers:

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020
[The Mobile Homes \(Requirement for Manager of Site to be Fit and Proper Person\) \(England\) Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2020/1251)

Annex 1 - Mobile Homes Fit and Proper Person Fee Policy
Annex 2 - Mobile Homes Fit and Proper Person Fee Calculation
Annex 3 - Mobile Homes Fit and Proper Person Determination Policy
Annex 4 - Guidance for Site Owners