

ANNEX 4

THE MOBILE HOMES REQUIREMENT FOR MANAGERS OF SITE TO BE FIT AND PROPER PERSON

MID DEVON DISTRICT COUNCIL GUIDANCE FOR SITE OWNERS

Guidance for Site owners:

Overview:

1. Please note that this guidance is not comprehensive and does not cover every eventuality.
2. The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 (“the Regulations”) introduces a fit and proper person test for site owners or the person appointed to manage the site. The purpose of the fit and proper person test is to improve the standards of park home site management.
3. An application must be made by a site owner, if they hold, or have applied for, a site licence for the site. An application fee must be paid and an annual fee may also be applicable. Please refer to the Mid Devon District Council Fit and Proper Person Fee Policy for further information on this which will be sent out at a later date.

Definitions

4. “The applicant” is defined at paragraph 2 of the Regulations as “the person who makes an application under regulation 6”.
5. The “relevant person” is also defined at paragraph 2 of the Regulations to mean “the subject of the fit and proper person assessment under Regulation 7”.

The application form

6. Please consider the application form carefully and answer all questions. The Application form must be completed and will contain information that is outlined in the Regulations. In summary, you must provide the following to the Council:
 - a) Details of site and applicant;
 - b) Information relating to the site manager;

- c) Additional information where another person who is an individual is involved in the day-to-day management;
 - d) Additional information where another person, who is not an individual, is involved in the day-to-day management of the site.
7. Where the site owner is an individual, the application must be completed by that individual.
8. If the site owner is a company or corporate body, the application must be completed by the 'appropriate person'. The appropriate person:
- a) Where the applicant is a company, is a director or other officer of the company; or,
 - b) Where the applicant is a partnership, a partner; or,
 - c) Where the applicant is a body corporate, a member of the management committee.
9. The site owner must provide the following information about the responsible person's conduct. That is, whether the responsible person:
- a) has committed any offence involving fraud or other dishonesty, violence, arson or drugs or 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, or in connection with, the carrying on of any business;
 - 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; and
 - g) has the right to work in the United Kingdom.
10. A criminal record check (basic) must be submitted for the individual being assessed as the fit and proper person and, where applicable, other individuals responsible for the day-to-day management of the site. If a company, the individual responsible for day-to-day management of the site must also submit a criminal record check.
11. The criminal record check must have been issued no more than six months before the date of the Fit and Proper Person application.

Application – Other Considerations:

12. There are other considerations that the Council will take into account as outlined in the Regulations, such as:

- a) Ability to secure proper management of the site (e.g. site licence compliance and long term maintenance of the site).
- b) Sufficient competence to manage site.
- c) Management structure and funding arrangements.
- d) Proposed management structure and funding arrangements.
- e) Any offences (as outlined above) committed by responsible or relevant person outlined in paragraphs 3 & 4 of Schedule 3 of the Regulations.

13. The applicant must provide this information as outlined on the application form. Providing the above information will ensure that a balanced decision is made, tailored to a particular area or site. The Council will ensure that consistent standards are applied to companies and other organisations who are not individuals.

14. The applicant is to provide further detailed information about responsible persons who have responsibilities for the day-to-day management of the site including holiday cover.

Declaration

15. It is important that you are aware that the declaration on the form is to make the site owner accountable for providing the correct information. It will ensure that where the site owner asks for information from the relevant person, a responsible person, or anyone else involved in the management of the site, to enable them to complete the application form they do all they reasonably and legally can, to ensure they receive and provide the correct information.

16. The site owner could be prosecuted for a breach of the Regulations if it is later found that some or all of the information included in the form is false or misleading.

The Register

17. The Council must set up and maintain a register of persons who they are satisfied are fit and proper person/s to manage a site in the Mid Devon area. This register will be open to inspection by the public during normal office hours. This register will be published online on the Council's website. The register will contain the information as defined in the Regulations. The privacy statement under GDPR is published on Mid Devon District Council's website or available on request from licensing@middevon.gov.uk.

Council decisions

18. Decisions and notifications by the Council are expected to be made as soon as reasonably practicable once all requested information is provided. The Council can decide to either:
- a) Grant the application unconditionally and include the person's name on the register for 5 years;
 - b) If they anticipate another decision – serve a preliminary notice on the applicant.
 - c) If a preliminary notice is served, this must include reasons for their decision and about the right to make representations about the preliminary notice.
19. The site owner has 28 days in which to make written representations if they do not agree with the preliminary notice. Please send written representation to Specialist Lead – Licensing, Mid Devon District Council Phoenix House Phoenix Lane Tiverton EX16 6PP or email licensing@Middevon.gov.uk
20. The Council will take into account any representations before making its final decision and issuing the final decision notice. This must be done as soon as reasonably practicable after the conclusion of the 28 day period. Written representation will be considered by the Team Leader – Commercial.
21. A final notice must include reasons for the decision and about the right of appeal against the decision.

Review during inclusion

22. During decision for inclusion on the register, the Council will be able to review a person's inclusion if relevant new information comes to light.
23. Such review may result in removal from the register, addition, variation, or removal of a condition attached to a person's inclusion.
24. Following a review, of which the possibilities are outlined in paragraph 21 above, the Council must issue a notice to the site owner setting out specified information about any action it intends to take.
25. The site owner will have 28 days in which to make representations which the Council must consider before making a final decision on any action taken. Please send written representation to Licensing Mid Devon District Council Phoenix House Phoenix Lane Tiverton EX16 6PP or email licensing@middevon.gov.uk
26. Having made a decision and taken the proposed action, the Council must service a notice of action with 5 working days of the date of the

action, setting out the details of the action that it has taken and include detail as to the right to appeal.

Amending preliminary decisions:

27. The Council can withdraw or amend a preliminary decision before service of the final decision notice, or a final decision notice itself, before the decision to which it relates takes effect, or a notice of proposed action before the proposed action is taken, by serving a notice on the site owner.

Right to appeal:

28. A site owner has the right to appeal to the First-tier Tribunal (Property Chamber) against any decision to:

- a) Include a person on the register for less than 5 years.
- b) Attach or vary conditions to an entry on the register.
- c) Reject an application for an entry or remove a person from a register.

The First-tier Tribunal (Property Chamber) at Her Majesty's Courts and Tribunals Service, Havant Justice Centre, The Law Courts, Elmleigh Road, Havant, Hampshire, PO9 2AL .

Completion of register

29. Having assessed the application– the Council may decide to add the person to its fit and proper person register. Addition to the register may be with or without conditions.

30. If the person fails the fit and proper person test, the application and record of that decision is added to the register.

Application fee and annual fee:

31. The Council will be able to charge an application fee and an annual fee to recover the costs they have incurred, or which will be incurred in appointing a person to manage a site with the site owner's consent. The fee will be set out in the Fit and Proper Person Fee Policy which will be sent at a later date.

Offences:

32. There are 3 offences which can occur within the Regulations. They are as follows:

- (a) Operating a site in contravention of the fit and proper person regulations - The site owner will have certain defences under the Regulations in proceedings against them.

(b) Withholding information or including false or misleading information in the registration application - The site owner will not have any defences under the Regulations in proceedings against them for this offence.

(c) Failing to comply with a specified condition - The site owner will have certain defences under the Regulations in proceedings against them.

33. Mid Devon District Council Licensing are responsible for enforcing the Regulations. A site owner found guilty of any of the above offences could be liable on conviction in the Magistrates' Court to an unlimited fine. The Council will follow the Enforcement Policy PH/EP/09/20 published on the Mid Devon District Council website below
<https://www.middevon.gov.uk/residents/health-and-wellbeing/public-health-and-regulatory-services/public-health-enforcement-policy/>

34. Please bear in mind, in the worst case scenario, the Council can make an application to the Tribunal to revoke the site owner's site licence under paragraph 13 of the Regulations. [To date, the Ministry of Justice has not produce the relevant forms to be used in connection with the Regulations in the Tribunal.]

Where to send application:

35. Completed applications must be sent to: Licensing, Mid Devon District Council Phoenix House Phoenix Lane Tiverton EX16 6PP or email licensing@middevon.gov.uk

36. Fees will be requested once the application is received.

37. You are strongly advised to retain a copy of the form for your records.

Data Protection:

38. The Council manages personal data in accordance with the provisions of the Data Protection Act 1998 and the General Data Protection Regulations. The information you provide on this form will be used by the Council for the purposes of the fit and proper assessment. The privacy statement is available on the Mid Devon District Council's website or available on request.

39. We may share your information and make any other necessary enquiries with other departments within the council and statutory organisations in relation to the application.

40. Your personal information will be processed in line with Data Protection legislation. We will not disclose information about you to anyone

outside the Council unless the law permits or requires us to. We will retain your data for as long as it is required for our administrative use, after which it will be securely disposed of.

41. For the purpose of processing and maintaining the mandatory register of fit and proper persons in ownership or management of a protected mobile home site, the name, address, status (in relation to the relevant protected site) and detail about whether any conditions are attached to the inclusion in the register will appear on a public register of the fit and proper person test. This public register will be available on the Council's Website and can be requested by any person.
42. Where the application is being made on behalf of a person appointed, or to be appointed, to manage the site, you are strongly advised to ensure they are aware of the register and the information that will be entered into it. As the applicant, it is your responsibility to seek confirmation that the information they have provided to you is true and accurate.
43. If you believe the data the Council processes on you is incorrect you may request to see this information and, if necessary have it corrected or deleted. If you wish to raise a complaint you can contact our Data Protection Officer at (address below).
44. If you believe we are not processing your data lawfully you can complain to the Information Commissioner's Office (<https://ico.org.uk/>). Further details are available on our website below <https://www.middevon.gov.uk/business/licensing/caravan-sites/> or from the Data Protection Officer Mid Devon District Council Phoenix House Phoenix Lane Tiverton EX16 6PP or (email: dpo@middevon.gov.uk)