

MID DEVON DISTRICT COUNCIL
Annex 2 to Caravan Site and Mobile Homes Policy
Mobile Homes Fit and Proper Person Determination

1.0 Introduction

1.1 When conducting the fit and proper person assessment, the Council will consider the following points relevant to the application:

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. It follows that, the Council must 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.

2.0 The Fit and Proper assessment

2.1 Competence to manage the site

2.1.1 This includes reviewing the competency of the appointed individual to ensure they have sufficient experience in site management, or have received sufficient training, and are fully aware of the regulations as well as health and safety requirements.

2.1.2 Proper management of the site includes, but is not limited to, securing compliance with the site licence and the long term maintenance of the site.

2.1.3 To be able to secure the proper management of the site, the Council must (amongst other things) have regard to whether the relevant person has a sufficient level of competence to manage the site and the management structure or proposed management structure and funding arrangements.

2.2 The management structure and funding arrangements for the site

2.2.1 The Council will consider whether relevant and adequate management structures and a robust management plan is in place to ensure effective management of the site.

2.2.2 The Council will review the management plan to ensure it addresses 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, and recycling/ refuse removal.

2.2.3 The applicant's interest in the land will have an important impact, as would their financial standing, management structures and competence, all of which could

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contribute to the overall assessment of their suitability to manage the site effectively.

- 2.3 The proposed management structure and funding arrangements in place for managing the site
 - 2.3.1 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 with the application for the fit and proper test.
 - 2.3.2 If funding is through a third party (including an associated company) the Council will consider the impact on whether the application is financially viable.

- 2.4 **Personal information relating to the applicant concerned.** This would include a criminal record check and should include evidence that the applicant:

- (a) has not committed any offence involving fraud or other dishonesty, violence, firearms or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements) at any point in time;
- (b) has not 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 not contravened any provision of the Equality Act 2010 in, or in connection with, the carrying on of any business;
- (d) has not harassed any person in, or in connection with, the carrying on of any business;
- (e) is not or has not been within the past 10 years, personally insolvent;
- (f) is not or has not been within the past 10 years, disqualified from acting as a company director;
- (g) has the right to work in the United Kingdom and,
- (h) is a member of any redress scheme enabling complaints to be dealt with in connection with the management of the site .

Note: There is no current requirement for site owners or their managers to belong to a government-approved redress scheme. However, if the relevant person is a member of a trade body's redress scheme it is sufficient to provide that information in the application.

- 2.5 The Council has a duty to investigate any conduct which could amount to harassment and any evidence obtained should be reviewed to determine whether it is sufficient to be used to prosecute a site owner.
- 2.6 The Council may also rely on convictions by the courts as evidence of harassing behaviour, which would reduce the risk of the local authority being successfully challenged on any refusal to approve an applicant on this basis.
- 2.7 The Council may have records of previous harassment complaints made against a site owner or their manager. Even if no action was taken on these complaints these will be taken into consideration in the fit and proper person determination.

- 2.8 These complaints may identify further potential risks and can also 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.
- 2.9 The Council in their determination will address any underlying issues by attaching conditions to the individual's entry on the register.
- 2.10 Where the person has committed offences or contravened legislation listed at paragraph 3.2, these breaches should be considered, together with all the other information available, when reaching their preliminary decision.
- 2.11 Upon rejection of a person's application by any other local authority this should be centrally recorded and include the details of the person involved and the reasons for the rejection.

3.0 Other considerations

- 3.1 "The applicant" is defined as "the person who makes an application under the Regulations".
- 3.2 The "relevant person" is defined as "the subject of the fit and proper person assessment under Regulation 7".
- 3.3 The conduct of any person associated or formerly associated with the relevant person (whether on a personal, work or other basis) is also an important factor to be considered in the fit and proper person assessment.
- 3.4 Site owners may be required to provide details of the conduct of any current or former associates of the relevant person in the application form and should be considered by the Council prior to making any final decisions. Those associates will not include other current joint owners as that information should have already been provided in their own application forms.
- 3.5 A relevant associate could be defined as 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.
- 3.6 The Council will take into consideration all matters deemed relevant to the fit and proper person application. These matters could be in relation to current or previous issues, or events, that have occurred in relation to the park site or any other park site owned or managed by the site owner or site manager in another local authority area.
- 3.7 The site owner's conduct regarding other business, outside of the park homes sector, can also have implications on the financial and management arrangements of the site in question. Any matters which the Council believe to be of relevance to the application should primarily focus on the relevant person's conduct, competence and their suitability to manage the site.

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3.8 The Council will request and collect relevant information and evidence to support any additional matters that they require to be taken into consideration for the application.

4.0 Decisions, notification and rights of appeal

4.1 The Council must make a decision on the application in a timely and practicable manner and either:

- (a) 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
- (b) otherwise, serve a preliminary decision notice on the applicant.

4.2 On receipt of an application the local authority may:

- (a) grant the application unconditionally;
- (b) grant the application subject to conditions; or
- (c) reject the application.

4.2(a) Granting the application unconditionally

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

4.2(b) To include the applicant on the register subject to certain condition(s)

4.2.3 In some circumstances, the Council will specify that the individual for the fit and proper person test will only be successful if certain conditions are met. If these conditions are satisfied, the Council can grant an application subject to those condition(s). The Council can also grant an application for less than 5 years.

4.2.4 It may be the case that the Council decides to include the person on a register subject to condition(s), if it would only be satisfied that the person would meet the fit and proper requirement if the condition(s) were complied with. An applicant will be able to appeal against the decision to attach (or vary) any condition to an entry on the register.

4.2.5 A preliminary decision notice to the applicant will be issued where a local authority makes a decision to include the applicant on the register, subject to conditions.

4.2.6 Conditions will be clearly stated for the applicant's understanding and this will also allow for local authorities to ensure that they are enforceable.

4.2(c) Decisions not to include the applicant on the register

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

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- 4.2.8 A preliminary decision notice will be issued to the applicant where a local authority makes a decision not to include the applicant on the register,
- 4.2.9 The preliminary decision notice must clearly state:
 - (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 conditions.

5.0 Right to make a representation

- 5.1 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.
- 5.2 The Council will consider and take any representations it receives into account before making a final decision.

6.0 Final decision notice

- 6.1 The Council must, 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.
- 6.2 The final decision notice must 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;
 - (f) 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
 - (g) where the decision is to grant the application subject to conditions, the consequences of failing to comply with any condition.

7.0 Withdrawal or amendment of notice

- 7.1 There may be circumstances where the Council may decide not to continue or to withdraw a previously agreed action such as after serving:
 - (a) a preliminary decision notice but before service of the final decision notice;

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- (b) a final decision notice but before the decision to which it relates takes effect; or
- (c) a notice of proposed action but before the proposed action is taken.

7.2 To withdraw or amend a notice, the Council must serve notice to the person on whom the original notice was served.

8.0 Removal from the register

- 8.1 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.
- 8.2 The Council will use our judgement when determining whether to review an entry on the register and consider any subsequent actions that are required.
- 8.3 The review may be carried out by an Officer or referred to a Sub-Committee of the Regulatory Committee for consideration.
- 8.4 A decision will be related to the person being a fit and proper person rather than, for example, site licensing issues which are governed separately. If the Council decides to take any of the actions listed in paragraph 7.1(a) to (c) above, the local authority must serve a notice of any proposed action on the occupier.
- 8.5 The notice of proposed action will 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.
- 8.6 A notice of proposed action is not required if the Council decides to remove a condition attached to an entry. A removal of a condition is viewed widely as being a positive step, which is unlikely to be opposed. It is for that reason that a notice of proposed action is not required. The Council will make the site owner or their manager aware of the decision in writing and also ensure the register is updated.

9.0 Notice of action taken

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- 9.1 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 in writing to the Council.
- 9.2 The Council must, as soon as reasonably practicable after the end of the 28-day period, decide whether to carry out the proposed action.
- 9.3 Where the Council decides to take the action, the Council must 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.
- 9.5 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.

10.0 Offences

- 10.1 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 may have certain defences under the Regulations in any proceedings brought 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 any proceedings brought against them for this offence.
 - (c) Failing to comply with a specified condition - The site owner may have certain defences under the Regulations in any proceedings brought against them.

- 10.2 The Licensing Team at the Council are responsible for enforcing the Regulations. A site owner found guilty in the Magistrates' Court of any of the above offences may be liable on conviction to a level 5 (unlimited) fine.

11.0 The Fit and Proper Persons Register

- 11.1 The Council holds a register of persons who they are satisfied are fit and proper persons to manage a site in the Mid Devon District. This register must be open to inspection by the public during normal office hours. The register is published

11.2 The register provides a record of the outcome (as defined above) of the fit and proper person assessment that the Council has 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).

11.3 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.

11.4 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 and correct fee for the person (or alternative) to be included in the register.

11.5 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.

11.6 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.

11.7 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.