

OVERVIEW & SCRUTINY

DATE OF MEETING:	15 June 2021
TITLE OF REPORT:	Determination Policy and Fee Policy for the “Fit and Proper Person Test” for managers of mobile home sites
Report of:	Head of Community
Cabinet Portfolio:	Community
Key Decision	No
Confidentiality	Non Exempt

1 PURPOSE OF REPORT

- 1.1 The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, require the manager of a site to be assessed as a Fit and Proper Person. Local authorities are accordingly required to introduce a test for mobile home site owners, or the person appointed to manage the site, unless they are eligible for an exemption under the Regulations.
- 1.2 The purpose of this report is to outline to Members the requirements of the new responsibility and to seek feedback on the policies drawn up to support this new statutory requirement prior to consideration and adoption by Cabinet

2 OFFICER RECOMMENDATION

It is recommended that the Overview and Scrutiny Committee recommend to Cabinet, subject to any suggested amendments, the approval of:

- the Fit and Proper Person Determination policy.
- the Fit and Proper Person Fees Policy fee

3 BACKGROUND

- 3.1 The Regulations require site owners, (or the person appointed to manage a caravan site) to apply to the local authority from 1 July 2021 up to and including 30 September 2021 to be a ‘fit and proper person to manage the site’.
- 3.2 A local authority must then consider and be satisfied that the site owner (or appointed manager) “*is a fit and proper person to manage the site*”.
- 3.3 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, the local authority can instead appoint a person to manage the site.

- 3.4 The new statutory requirement applies to “relevant protected sites”, i.e. one which requires a licence and which is not solely for holiday purposes or is otherwise not capable of being used all year round. The new requirement will ensure that site owners, or their managers, have integrity and follow best practice. 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.

4 MAIN ISSUES

- 4.1 The Fit and Proper Person legislation is a new mechanism for local authorities to determine whether the person with day-to-day responsibility for managing each residential site within their district is fit to do so.
- 4.2 The legislation does not apply to single family sites; only to those that are operated on a commercial basis. It is expected that 7 sites in the Hart area will be impacted, and officers will be working with site owners to ensure applications are forthcoming. They have already been sent a letter informing them of the upcoming requirements.
- 4.3 Applications will be made from July 2021. The council will need to assess the applicants’ circumstances using the agreed policy. A register of approved Fit and Proper Person applicants will be maintained by the council.
- 4.4 This is a new function of the council. A small amount of new burdens funding has been made available by the government, but the cost of the new function will be borne through the fee policy.

5 ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 5.1 The introduction of this policy and the associated fee structure is a legal requirement and so there are no alternative approaches to this.

6 CORPORATE GOVERNANCE CONSIDERATIONS

Relevance to the Corporate Plan and/or The Hart Vision 2040

This is a new legal requirement and so fits with the council’s regulatory role. The work was not included in the service plan but staffing resources to deliver the licensing can be drawn from the existing Private Sector Housing Team. The fee policy takes into account the financial costs of these resources and recharges the cost to the applicant.

Service Plan

Is the proposal identified in the Service Plan?	No
Is the proposal being funded from current budgets?	No
Have staffing resources already been identified and set aside for this proposal?	Yes

Legal and Constitutional Issues

Adopting the Determination Policy will enable Hart to make decisions and uphold these decisions if challenged. Through the Local Authority Caravan Site Licensing Officers Forum, barrister advice has been obtained in the preparation of both policies.

Financial and Resource Implications

There are revenue costs associated with the costs of this new regulatory function; these are recharged back to the applicant via the fee policy. There are no other financial implications. If the fees policy is not adopted, the council will not be able to recover the costs associated with this new statutory function.

The function will be carried out with existing staffing resources within the Private Sector Housing Team, in Community Services.

Risk Management

The council needs to adopt both policies in order to fulfil its statutory responsibility and to recover the costs associated with the function.

Access to information and the public interest test

There is nothing confidential in this report.

7 EQUALITIES

- 7.1 The recommendation has no impact on any particular groups. It is simply to agree a new regulatory function for those who manage mobile/park home sites.

8 CLIMATE CHANGE IMPLICATIONS

- 8.1 There are no climate change implications associated with this report.

9 ACTION

- 9.1 Members of Overview and Scrutiny Committee are asked to recommend to Cabinet that both policies be adopted.

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Appendices

**Add rows as required to box below*

Ref.	Title of Appendix	Exemption Paragraph Number (if applicable) <i>If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule 1 of the Local Government Act 1972 by ticking the relevant exemption paragraph number.</i>						
		1	2	3	4	5	6	7
A	Fit and Proper Person Determination Policy							
B	Fit and Proper Person Fee Policy							



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

Determination Policy

<i>Date created</i>	01 06 21	<i>Department</i>	Community Services
<i>Review date</i>	01 06 26	<i>Version</i>	1.0

This document is available in alternative formats other languages, Braille and large print, by request.

- 1. Introduction**
- 2. The Test**
- 3. Applications**
- 4. Criminal Record Checks**
- 5. Decisions and Rights of Appeal**
- 6. Offences & Defences**
- 7. Fit and Proper Person Register**

I. Introduction

- 1.1 The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, require the manager of a site to be a Fit and Proper Person (“the Regulations”). Hart District Council is accordingly required to introduce a fit and proper person test for mobile home site owners, or the person appointed to manage the site, unless they are eligible for an exemption under the Regulations.

The Regulations allow local authorities to receive applications from existing site owners, or the person appointed to manage the site, from 1 July 2021 up to and including 30 September 2021.

The council 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”.

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 council can instead appoint a person to manage the site, but only with the consent of the site owner.

Principally, the fit and proper person test applies to a “relevant protected site”. A relevant protected site 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, or that is a site for a single family. The fit and proper person requirement will ensure that site owners, or their managers, have integrity and follow best practice. 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. park home owners.

2. The Test

- 2.1 When conducting a fit and proper person assessment the council will consider if the applicant is 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 must also have regard to:

(a) Competence to manage the site

This includes reviewing the competency of the applicant. He or she 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. Hart DC will ensure that the applicant has a robust management plan, that 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 refuse removal.

It is advisable that the site is managed by an applicant based in the UK. The applicant's interest in the land will also have an important impact, as will their financial standing, management structures and competence, all of which will contribute to the overall assessment of their suitability to manage the site effectively.

(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 will be requested.

- 2.2 The council will also check a range of personal information relating to the applicant. This will include a criminal record check and will 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);
 - (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 (when this is in place).

3.0 Applications

The application for inclusion in the fit and proper persons register must be made in writing to the Private Sector Housing Team. Applications should be made on the relevant form; these can be found at www.hart.gov.uk

4. Criminal Record Checks

Criminal Records Certificates must be issued under section 113A (1) of the Police Act 1997 and will be required where: (a) the Relevant person is an individual and (b) for each individual in relation to whom the applicant is required to provide information (for example a site manager)

The certificate must have been issued no more than six months before the date of the application. It is incumbent upon the site owner to ensure that any certificates provided meet this requirement.

5. Decisions, notifications and rights of appeal

5.1 The council will make a decision on the application and will either:

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

The council will follow the latest published MHCLG Guidance when making the above decisions.

5.2 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

6. Offences & Defences

6.1 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
- (b) Withholding information or including false or misleading information in the registration application
- (c) Failing to comply with a specified condition

6.2 The Council is responsible for enforcing the regulations. A site owner found guilty of any of the above offences will be liable on summary conviction to a level 5 (unlimited) fine.

6.3 One defence is available to a site owner who has inherited a site and would be found to have a reasonable excuse for failing to make an application within the relevant periods as set out below. The MHCLG guidance outlines other circumstances where the applicant may have a defence.

7. The Fit and Proper Persons Register

- 7.1 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 at the Civic Offices during normal office hours. This register is also published online (www.hart.gov.uk).
- 7.2 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).
- 7.3 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.
- 7.4 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 for the person (or alternative) to be included in the register.



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

Fee Policy

<i>Date created</i>		<i>Department</i>	Housing Services
<i>Review date</i>		<i>Version</i>	1.0

This document is available in alternative formats other languages, Braille and large print.

- 1. Introduction**
- 2. Initial Application Fee**
- 3. Payment of Fees**
- 4. Such other matters as the local authority considers to be relevant**

I. Introduction

- 1.1 The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, require the manager of a site to be a Fit and Proper Person (“the Regulations”). Hart District Council is accordingly required to introduce a fit and proper person test for mobile home site owners, or the person appointed to manage the site, unless they are eligible for an exemption under the Regulations.

The Regulations permit the council to determine the fee for an application or registration for someone to be added to the register. It is imperative that the fee is included with the application and failing to include this may mean that the site owner is in breach of the requirements of the Regulations.

The purpose of publishing this fee policy is to show that the fees imposed by the local authority are fair and transparent so that anyone required to pay a fee can understand the charges.

2. Initial Application Fee

- 2.1 Hart District Council believes that fit and proper person assessment and/or checks to be included on the fit and proper register will take a total of 150 minutes per application. This time of 150 minutes includes updating and publishing the register. The application fee has been set at **£243.22**.

- 2.2 Ultimately, the checks will be carried out by the same officers who carry out the licensing functions; Environmental Health & Housing Officers and the Private Sector Housing Manager. Therefore, their hourly rates as per table ‘A’ should be applied.

- 2.3 The fee takes into account the following activities:

(a) Initial enquiries;

(b) letter writing/ telephone calls etc to make appointments and requesting any documents or other information from the site owner or from any third party in connection with the fit and proper process;

(c) sending out forms;

(d) updating files/ computer systems and websites;

(e) processing the application fee;

(f) land registry searches;

(g) time for reviewing necessary documents and certificates;

(h) preparing preliminary and final decision notices;

(i) review by manager or lawyers; review any representations made by applicants or responses from third parties;

(j) updating the public register;

(k) carrying out any risk assessment process considered necessary and

(l) reviews of decisions or in defending appeals.

Table 'A' below provides a clear breakdown of how this fee has been determined.

Table 'A'

		Time in minutes	Staff	Rate	Total
1	Pre-application advice	15	Officer	53.58	13.40
2	Application received; check it is fully completed and signed with correct fee. Process fee and create file.	30	Officer	53.58	26.79
3	Review application and make enquiries re F&PP documents and declarations	60	Officer	53.58	53.58
4	Application file reviewed by Senior	30	Manager	56.35	28.18
5	Decision made on application	15	Officer	53.58	13.40
6	Establish any conditions applicable	15	Officer	53.58	13.40
7	Review appeal paperwork	30	Officer	53.58	26.79
8	EH&HO discuss appeal with SEH&HO	15	Both	109.93	27.48
9	Produce appeal response and relevant notice	15	Officer	53.58	13.40
10	Issue final decision notice following appeal	15	Officer	53.58	13.40
11	Add relevant person details to register	15	Officer	53.58	13.40
				Total	£243.22

3. Payment of fees

3.1 The council will not consider an application for entry on the register unless that application is accompanied by the correct fee. If the correct fee is not paid, the application will not be valid, and the site owner could be in breach of the Regulations.

3.2 If the council decides not to approve an application the applicant is not entitled to a refund of the fee paid.

4. Such other matters as the local authority considers to be relevant

4.1 Where no fee is applied

In certain circumstances, the council may determine that no fee is required to be paid. A site is exempted from a fee only if it is occupied by members of the same family and is not being run as a commercial residential site.

4.2 An appointed manager fee

Where the council has to appoint a site manager, a separate fee will be required. This will be calculated on a case by case basis, based on the true costs of securing an alternative, qualified site manager.

4.3 Revising Fees

The council reviews its fees and charges annually. If there is a change to the fee, a new fee policy will be published.