

## **CABINET**

<b>DATE OF MEETING:</b>	<b>1 July 2021</b>
<b>TITLE OF REPORT:</b>	<b>Policy and Fee Policy for the “Fit and Proper Person Test” for managers of mobile home sites</b>
<b>Report of:</b>	<b>Head of Community</b>
<b>Cabinet Portfolio:</b>	<b>Community</b>
<b>Key Decision</b>	<b>No</b>
<b>Confidentiality</b>	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 (‘the Regulations’) prohibit the use of land as a residential mobile home site unless the local authority is satisfied that the owner or manager of the site is a fit and proper person to manage the site.
- 1.2 The purpose of this report is to seek Cabinet approval for the policies drawn up to support this new statutory requirement so they can be adopted and implemented.

### **2 OFFICER RECOMMENDATION**

It is recommended that Cabinet approve the adoption of the following policies:

- Appendix 1: The Fit and Proper Person Determination policy.
- Appendix 2: The Fit and Proper Person Fees Policy fee.

### **3 COMMENTARY**

- 3.1 The Mobile Homes Act 2013 (MHA 2013) made significant changes to the local authority site licensing regime, providing local authorities with new enforcement powers. The Regulations come into force in July 2021, and introduce a requirement for ‘relevant protected sites’, which have residential occupation all year round to be managed by a fit and proper person. It also sets out an overarching framework for the operation of the test, the processes that local authorities will use and a register of fit and proper site managers.
- 3.2 The purpose of the test is to improve the standards of park home site management, by introducing an assessment that the person responsible for managing the site is suitable and of good character. The requirement for the person responsible for managing the site to be a fit and proper person is in addition to the requirement for a site to be licensed.

- 3.3 Once in force, the fit and proper person requirement will make it an offence for a site licence holder to cause or permit land to be operated as a park home site unless they are a fit and proper person to manage the site.
- 3.4 The Regulations not apply to single family sites; only to those that are operated on a commercial basis There are seven “relevant protected sites” within the District (The Grange, Church Crookham; Blackbushe Park, Yateley; Oaklands, Hook; Elvetham Bridge, Fleet ; Meadow View (Walls), Hook ; Pennyhill, Blackwater; Four Oaks, Crondall). It is a legal requirement for the occupier of each site to have applied and have been entered onto a fit and proper person public register by the end of September 2021. Prior to this date all sites will have been advised of their responsibilities.

#### **4 OVERVIEW OF THE FIT AND PROPER PERSON ASSESSMENT**

- 4.1 The site owner 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. They 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.
- 4.2 The Council must consider the application in order to satisfy itself that the relevant person is a fit and proper person to manage the site. It must then decide whether to place the relevant person on the register with or without conditions, or not to place them on the register. A site owner will have a right of appeal against a decision or condition.
- 4.3 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 assessment, the Council may appoint a person to manage the site, with the consent of the site owner.
- 4.4 It is an offence for a site owner to:
- (a) cause or permit land to be operated as a relevant protected site unless they or the person appointed to manage the site is a fit and proper person to manage the site
  - (b) provide false or misleading information or fail to provide information in an application; or
  - (c) fail to comply with a requirement set as a condition of the local authority’s decision to include a person on the register
- 4.5 If convicted for any of these offences, the site owner will face a potentially unlimited fine.

#### **5 OVERVIEW AND SCRUTINY COMMITTEE COMMENTS**

- 5.1 Overview and Scrutiny Committee had a useful debate about this paper and asked for a number of points to be considered in a second draft of both appendices. Both the determination policy and the fee policy have been updated to reflect many of these comments. Some comments could not be taken on board because the council needs to draft the documents in line with

the guidance published by the Ministry of Housing, Communities and Local Government. These points were largely around the nature of the checks that a site manager needs to pass in order to be included on the fit and proper person register. These are clearly scoped out in the guidance and adding additional checks may not be defensible at an appeals tribunal. The determination policy has been updated to reference the government guidance to make the scope and the detail of the assessment process easier to understand and more transparent.

## 6 ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

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

## 7 CORPORATE GOVERNANCE CONSIDERATIONS

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

- 7.1 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

- 7.2 The Ministry of Housing, Communities and Local Government has issued guidance to all local authorities on the implementation of these regulations. "Mobile Homes: a guide for local authorities on the fit and proper person test" was published on 4<sup>th</sup> June. The guidance can be found here <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>
- 7.3 Adopting the Policy as set out in Appendix 1 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

- 7.4 This is a new function of the council. A small amount of new burdens funding (£568) has been made available by the government, but the cost of the new function will be borne through the fee policy.

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

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

### **Risk Management**

- 7.6 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**

- 7.7 There is nothing confidential in this report.

## **8 EQUALITIES**

- 8.1 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.

## **9 CLIMATE CHANGE IMPLICATIONS**

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

## **10 ACTION**

- 10.1 Cabinet is asked to approve the adoption of both policies so that they can be implemented immediately.

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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>	18 06 21	<i>Department</i>	Community Services
<i>Review date</i>	18 06 26	<i>Version</i>	1.0

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

## **INTRODUCTION**

1. The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 (‘the Regulations’) prohibit the use of land as a residential mobile home site unless the Council is satisfied that the owner or manager of the site is a fit and proper person to manage the site. The purpose of the fit and proper person test is to improve the standards of park (mobile) home site management.
2. The Regulations were made on 23 September 2020 and allow local authorities until 1 July 2021 to prepare to receive applications from site owners. From 1 July 2021 and by 1 October 2021 all site owners must submit an application for a relevant person to be assessed as fit and proper persons.
3. The Regulations apply in relation to all relevant protected sites other than non-commercial family-occupied sites. These include both “residential parks”, which are used exclusively residentially, and “mixed use parks”, which are used for both residential and holiday purposes.
4. In this document, references to a “site owner” are used in place of the term “occupier” for ease of reference. The “applicant” must also be the occupier but where the occupier is not an individual, the application can be made on their behalf by a relevant officer. Site owner is again used in place of the applicant for ease of reference.
5. 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 homeowners.
6. The council will follow current guidance published by the Ministry of Housing, Communities and Local Government (MHCLG) when carrying out an assessment of an application received by someone to be included on the fit and proper person register. The current guidance can be found here:
7. <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>

## **OVERVIEW OF THE FIT AND PROPER PERSON ASSESSMENT**

8. The site owner 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. They 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.
9. The Council must consider the application in order to satisfy itself that the relevant person is a fit and proper person to manage the site. It must then decide whether to place the relevant person on the register with or without

conditions, or not to place them on the register. A site owner will have a right of appeal against a decision or condition.

10. 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 assessment, the Council may appoint a person to manage the site, with the consent of the site owner.
11. It is an offence for a site owner to:
  - a) cause or permit land to be operated as a relevant protected site unless they or the person appointed to manage the site is a fit and proper person to manage the site
  - b) provide false or misleading information or fail to provide information in an application; or
  - c) fail to comply with a requirement set as a condition of the local authority's decision to include a person on the register

If convicted for any of these offences, the site owner will face a potentially unlimited fine.

## **THE TEST**

12. 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 securing compliance with the site licence and the long-term maintenance of the site. The Council must also have regard to the following areas, which are set out in the regulations and the government guidance:

### **1. 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.

### **2. 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.

The site should be 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.

### **3. 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.

13. The Council will also check a range of personal information relating to the applicant. This will include a criminal record check and, in line with published guidance, will include evidence that the applicant:
- i. 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).
  - ii. 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.
  - iii. has not contravened any provision of the Equality Act 2010 in, or in connection with, the carrying on of any business.
  - iv. has not harassed any person in, or in connection with, the carrying on of any business.
  - v. is not or has not been within the past 10 years, personally insolvent.
  - vi. is not or has not been within the past 10 years, disqualified from acting as a company director.
  - vii. has the right to work in the United Kingdom and,
  - viii. 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)?

## **APPLICATIONS**

- 14 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](http://www.hart.gov.uk)

## **CRIMINAL RECORD CHECKS**

- 15 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)
- 16 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.

## **DECISIONS, NOTIFICATIONS AND RIGHTS OF APPEAL**

- 17 The council will determine all applications in accordance with the latest MHCLG published guidance and will either:
- a) grant the application unconditionally,
  - b) grant the application subject to conditions; or
  - c) reject the application.
- 18 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 may appeal against any decisions made by the Council. These could include appealing against:
- 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) rejection of the application.

## **OFFENCES & DEFENCES**

- 19 There are 3 offences which can occur within the Regulations. They are:
- 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
- 20 A site owner found guilty of any of the above offences will be liable on summary conviction to a level 5 (unlimited) fine.
- 21 A 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.

## **THE FIT AND PROPER PERSONS REGISTER**

- 22 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 published online ([www.hart.gov.uk](http://www.hart.gov.uk)).
- 23 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).

24 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.

25 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.

## APPENDIX B



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

#### **Fee Policy**

<i>Date created</i>	18 06 21	<i>Department</i>	Housing Services
<i>Review date</i>	18 06 26	<i>Version</i>	1.0

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## INTRODUCTION

- 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”) unless they are eligible for an exemption under the Regulations.
- 2 The Regulations permit the council to determine the fee for an application or registration for someone to be added to the register. The fee must be included with the application and failing to include this may mean that the site owner is in breach of the requirements of the Regulations.

## INITIAL APPLICATION FEE

- 3 The Council considers that a 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 **£244.50**, as at 1<sup>st</sup> July. All fees are subject to an annual inflationary rise and revised fees will be published annually.
- 4 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.
- 5 The fee takes account of 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' provides a breakdown of how the fee has been determined.

**Table 'A'**

		<b>Time in minutes</b>	<b>Staff</b>	<b>£ Rate/hour</b>	<b>Total</b>
1	Pre-application advice	15	Officer	£54	£13.50
2	Application received; check it is fully completed and signed with correct fee. Process fee and create file.	30	Officer	£54	£27
3	Review application and make enquiries re F&PP documents and declarations	60	Officer	£54	£54
4	Application file reviewed by Senior	30	Manager	£56	£28
5	Decision made on application	15	Officer	£54	£13.50
6	Establish any conditions applicable	15	Officer	£54	£13.50
7	Review appeal paperwork	30	Officer	£54	£27
8	EH&HO discuss appeal with SEH&HO	15	Both	£110	£27.50
9	Produce appeal response and relevant notice	15	Officer	£54	£13.50
10	Issue final decision notice following appeal	15	Officer	£54	£13.50
11	Add relevant person details to register	15	Officer	£54	£13.50
<b>TOTAL</b>					<b>£244.50</b>

### **Payment of fees**

- 6 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.

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

### **SUCH OTHER MATTERS AS THE LOCAL AUTHORITY CONSIDERS TO BE RELEVANT**

#### **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.

#### **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.

#### **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.