

Report of the Assistant Director Waste, Fleet & Transport Services to the meeting of Bradford District Appeals Panel to be held on 21 February 2023

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Subject:

Review of fees charged by the licensing service and approval of the proposed Fit & Proper Person policies (determination policy and fees policy) under The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020

Summary statement:

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 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. This report seeks approval of a revised fee schedule and approval of the proposed determination policy and fees policy under the Act.

EQUALITY & DIVERSITY:

The Council has to comply with the public sector equality duty in S.149 Equality Act 2010.

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Portfolio:

Neighbourhoods & Community Safety

Overview & Scrutiny Area:

Corporate

1. SUMMARY

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 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. This report seeks approval of a revised fee schedule and approval of the proposed determination policy and fees policy under the Act.

2. BACKGROUND

2.1 Following a Government review of the Mobile Homes Act, 2013, the Government introduced new regulations; The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations, 2020.

2.2 The Regulations require that all owners or managers of permanent residential caravan sites are fit to manage the sites. The Determination Policy has been produced to enable officers to undertake this test in a fair, consistent and transparent way.

The Determination Policy is attached at Appendix 1.

2.3 A “relevant protected site” is a permanent residential caravan (mobile home) site which requires a licence but which is not exempt on the basis of being solely for holiday purposes or incapable of being used all year round. The regulations state that a relevant protected site cannot operate unless the local authority is satisfied that the manager qualifies as a fit and proper person.

2.4 A site owner must apply to their local authority for the relevant person (themselves or their appointed manager) to be added to the register of fit and proper persons managing sites in their area.

2.5 The site owner may only apply to be added to the register if they hold, or have applied for, a site licence for the site. This provision also applies where the site owner or site manager is a registered company.

2.6 The Regulations permit the local authority to determine the fee for an application or registration for someone to be added to the Fit & Proper Person register. The Fees Policy has been produced to enable officers to appropriately and fairly charge for the costs incurred in determining a Fit & Proper Person application.

The Fees Policy is attached at Appendix 2.

2.7 The Local Authority will be able to charge two types of fees to cover their costs.

An application fee to cover the cost of assessing applications to be included on the fit and proper register. An application must be accompanied by the application fee that has been fixed by the local authority for that period. If the fee is not included with the application, the local authority does not have to assess the application and the site owner could be in breach of the requirements and prosecuted by the local authority.

An annual fee to cover the cost of monitoring the scheme or conditions attached to entries. The authority can decide and set the frequency of payments to cover administrative costs. Payment of an annual fee may also be required as a condition of inclusion in the register.

All fees must be published in an authority's Fees Policy document and must be transparent and reasonable.

When fixing the application fee and deciding the amount and frequency of additional payments by way of an annual fee the local authority—

must act in accordance with their published fees policy;
may fix different fees for different cases or descriptions of case; and
may determine that no fee is required to be paid in certain cases or descriptions of case.

A Local Authority can revise their fees policy at any time but where they do so they must publish the revised policy.

The revised fees have been calculated to accurately reflect the costs incurred by the Council in determining applications and undertaking enforcement in relation to Mobile Homes.

The revised fee schedule is attached at Appendix 3.

3. OTHER CONSIDERATIONS

3.1 When considering whether a person is 'fit and proper' the local authority must have regard to the suitability of the person concerned ('the relevant person'). Schedule 3 paragraphs 2 to 4 of the Regulations make reference to those matters that must be considered by the local authority as part of any application. These include:

a) Whether the relevant person is able to secure the proper management of the site, including the history of management and financial arrangements;

b) criminal convictions relating to fraud, dishonesty, violence or contraventions of the law relating to housing, caravan sites, mobile homes, public health, planning or environmental health or of landlord and tenant law;

c) has harassed any person in, or in connection with, the carrying on of any business, been insolvent or disqualified from being a director of a company; and

d) whether any other local authority has rejected an application for the responsible person to be included in a register;

e) the local authority may also have regard to the conduct of any person associated or formerly associated with the relevant person (whether on a personal, work or other basis) if it appears to the authority that that person's conduct is relevant to the question of whether the relevant person is a fit and proper person to manage the relevant protected site or proposed relevant protected site (as the case may be).

The authority can also consider any evidence as to any other relevant matters.

- 3.2 Once an application has been received the local authority may grant the application with or without conditions, or reject it.

As soon as is reasonably practicable after a full and complete application is received (including the relevant fee) the local authority must make a decision on the application and either serve a Final Decision Notice without conditions and include the relevant person on the register for 5 years, or serve a Preliminary Decision Notice on the applicant and accept written representations from the applicant within 28 days. Once written representations have been received the authority may then make a final decision which may include approving an application subject to specific conditions.

- 3.3 Where the authority may seek to remove a relevant person from the register or to impose further conditions a Notice of Proposed Action will be issued in accordance with the Regulations. Again, any relevant person may make written representations within 28 days of such a notice being issued.

A person on whom a final decision notice or a notice of action is served may appeal against the decisions made to the First Tier Tribunal..

No compensation may be claimed for loss suffered, pending the outcome of the appeal, in consequence of the local authority making a final decision or taking action relevant to Regulation 8(1)(a), (b) or (c).

- 3.4 The Regulations require a local authority to establish and keep up to date a register of persons who they are satisfied are fit and proper persons to manage a relevant protected site in their area and to make the register open to inspection by members of the public at the offices of the local authority during normal office hours.

The authority must also publish the register online and the contents of the register will be in accordance with the Regulations.

A person's inclusion in the register has effect for a maximum period of 5 years.

- 3.5 The Regulations state that the same fee must be charged for all FPP tests, regardless of the size of site or reputation of the owner or manager.

- 3.6 An owner (occupier) of land commits an offence if he causes or permits any part of the land to be used as a "relevant protected site" without the manager of the site being registered with the local authority as a fit and proper person.

An applicant also commits an offence if he withholds information from a registration application or includes false or misleading information in a registration application or fails to comply with a condition imposed under Regulation 6(2)(b) or Regulation 8(1)

An owner (occupier) of land who is guilty of an offence is liable on summary conviction to a level 5 fine (unlimited).

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1 Adopting the fees policy will enable the Council to recover the costs associated with delivering this process. If the fees policy is not adopted, the Council will not be able to recover the costs associated with this statutory function.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

There are no apparent risk management and governance implications.

6. LEGAL APPRAISAL

Referred to in part 3 of this report.

7. OTHER IMPLICATIONS

7.1 SUSTAINABILITY IMPLICATIONS

There are no apparent sustainability implications.

7.2 GREENHOUSE GAS EMISSIONS IMPACTS

There are no apparent implications.

7.3 COMMUNITY SAFETY IMPLICATIONS

When determining the application, the Local Authority is required to pay due regard to Schedule 3 paragraphs 2 to 4 of the Regulations.

7.4 HUMAN RIGHTS ACT

The proposal has no specific implications for human rights.

7.5 TRADE UNION

Not applicable.

7.6 WARD IMPLICATIONS

None.

7.7 IMPLICATIONS FOR CORPORATE PARENTING

There are no apparent implications.

7.8 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

There are no apparent data protection or information security implications

8. NOT FOR PUBLICATION DOCUMENTS

None.

9. OPTIONS

The Committee may:

- (a) Approve the proposed policies and fees schedule.
- (b) Approve the proposed policies and fees schedule with amendments.
- (c) Refuse the approval of the proposed policies and fee schedule.

10. RECOMMENDATIONS

10.1 The Committee is recommended:

- a) To approve the proposed Fit & Proper Person Policies and Fee Schedule set out in the appendices to this report

11. APPENDICES

- 1. Determination Policy
- 2. Fees Policy
- 3. Fee Schedule

12. BACKGROUND DOCUMENTS

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020: A guide to local authorities on setting licensing fees