

REPORT FROM: HEAD OF HOUSING AND ENVIRONMENTAL HEALTH

TO: EXECUTIVE

DATES: 22nd June 2023

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Mobile Homes Fit and Proper Person Test Fee Policy

PURPOSE OF REPORT

To adopt the Mobile Home Fit and Proper Person Test Fee Policy

RECOMMENDATIONS

- 1) That the Executive approves the Mobile Home Fit and Proper Person Test Fee Policy, with the introduction of a fee at £298 for the assessment of Fit and Proper Person applications for relevant residential mobile home sites.

REASONS FOR RECOMMENDATION

- 1) For the protection of residents on mobile home park sites in ensuring that owners/operators of these sites are fit and proper persons.
- 2) To enable a fee to be charged for the implementation of The Mobile Homes (Requirement for Manager of Site to be a Fit and Proper Person) (England) Regulations 2020.

ISSUE

1. Background to the Policy

On 15th June 2020, Section 8 of the Mobiles Home Act 2013 came into force. Section 8 of the Act provides that there is requirement for a manager and site owner of a “Relevant Protected Site” to be a fit and proper person in England. The purpose of the act is to improve standards of parks, whilst ensuring sufficient financial and management arrangements are in place through the assessment of the owner and manager against a set criteria to be a fit and proper person.

The Mobiles Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, were published on 23rd September 2020.

2. Applications

The Council has a responsibility to consider a set of criteria - the “fit and proper person test” - in determining whether to grant an application unconditionally, grant it subject to conditions, or reject it. If a site licence owner or manager fails the test, the site owner would have to appoint a new manager (who must be fit and proper person) themselves, or consent to the Council to do so.

Applicants will be included within a public register which will be held for a period of 5 years. The Council may vary, or reject a condition attached to entries on the register.

3. Offences

It is an offence to breach a condition attached to an entry, provide false or misleading information in support of an application, or to operate a site without having a fit and proper person in place. If convicted of any of these offences, the site owner will be liable for an unlimited fine. Breach of these requirements will also enable the Council to apply to court to have the licence revoked. If a person is found to be operating the site and fails to comply with the Fit and Proper Person Test it is a criminal offence and if found guilty the person would be liable, on summary conviction of a fine up to level 5 (unlimited fine).

4. Fees

The Regulations allow the Council to charge a reasonable fee, covering administration of the application process and/or any enforcement of the legislation. The fee for the Fit and Proper Person Test is £298 per application. In setting its fees the Council has had regard to the "Fit and Proper Person Guide for Local Authorities on Setting Fees", issued by the Ministry of Housing, Communities and Local Government in 2021. The Council is not permitted to make a profit from the Fit and Proper Person Fee income and will only be seeking cost recovery based upon officer time (see Table A contained within the Policy).

In Pendle there is current 3 licensed residential mobile homes sites.

IMPLICATIONS

Policy: This is a new policy allowing the Council to apply a fit and proper test to park home managers and owners for which a fee is charged for processing their application to benefit and protect residents of park homes from financial and site mismanagement.

Financial: Implementing this decision will be met via existing resources, with income of £894 for the three existing sites. Any additional income fees thereafter will be from new applications.

Legal: The Mobiles Home Act 2013 Act provides that there is requirement for a manager of a "Relevant Protected Site" to be a fit and proper person in England, with the Mobiles Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, placing a responsibility on the Council based upon criteria to assess owners and managers of residential park home sites to ensure that they are a fit and proper person.

Risk Management: Approval of the report to mitigate the risks of inappropriate management and maintenance of parks and to improve the standards of sites. With the application of the fit and proper person assessment of owners and manager to run the site

Health and Safety: There are no health and safety implications arising from the report.


Sustainability: There are no climate change implications arising from this report.

Community Safety: Protection of mobile home park residents, to ensure that sites are operated and managed by persons meeting the fit and proper test criteria. That the site owner and manager are responsible, of good character and integrity. This in turn helps ensure that Pendle is an ideal choice of place for residents to live.

Equality and Diversity: There are no equality and diversity implications arising from this report.

APPENDICES

Appendix 1- Fit and Proper Person Test Fee Policy

	Fit and Proper Person Test Fee Policy			
	SUBJECT:	Fit and Proper Person Test Fee Policy for Residential Relevant Protected Sites		
	Date of issue:	May 2023	Reference:	FPPT/1

Title:	Fit and Proper Person Test Fee Policy
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Introduction

1. A relevant protected site is a site, which requires a licence, which is not solely for holiday purposes or is otherwise not capable of being used all year round. A relevant protected site cannot operate unless the local authority is satisfied that the manager qualifies as a fit and proper person, *Sections 12A -12E of the Caravan Sites and Control of Development Act 1960*, as implemented by *Section 8 Mobile Homes Act 2013* (subject to paragraph 10 below).

2. A site owner under the *Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 (SI 2020/1034)* ("the Regulations") 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 ("the register").

3. 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.

4. The Regulations permit the local authority 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.

5. It is important to highlight that this fee policy will refer to the recovery of costs which the local authority may have incurred, or which will be incurred, in appointing a person to manage a site with the site owner's consent. This will be calculated separately to the application fee.

Fees for Fit and Proper Persons Register Applications

Application fee

6. The Council has provided a breakdown of tasks associated with the fit and proper person assessment and/or checks to be included on the fit and proper register in Table A on page 4.

7. The fees are set as per Table A at £298 for the fit and proper person application process.

8. The Council has taken into account the following matters on which costs are incurred, or likely to be incurred, when determining its fee policy for consideration of applications for entry on a fit and proper person register:

(a) Initial enquiries;

(b) letter writing/emails/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/processing online application forms;
- (d) updating files/ computer systems and website;
- (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.

9. The charges are limited to recovering the costs of exercising the fit and proper person test function only and do not include other costs that have already been charged for by other service areas.

10. Please see Table A found at page 4 which outlines the above and provides transparent justification for the fee to be imposed upon receipt of the initial application. The purpose of this table is to demonstrate that the fees imposed are fair and transparent providing justification as to why a site is required to pay the fee. In light of the small number of sites that this applies to no annual fee will be charged in addition to the application fee for ongoing enforcement. The Council in setting its fees has had regard to the “Fit and Proper Person Guide for Local Authorities on Setting Fees”, issued by the Ministry of Housing, Communities and Local Government 2021. The Council is not permitted to make a profit from the Fit and Proper Person Fee income.

Additional considerations taken into account for the application fee:

11. The Council will be required to conduct relevant background checks regarding the applicant’s background in management and their financial standing. The results of these checks will allow the local authority to decide on whether or not to accept the application. The time taken for these checks has been accounted for in the fee, irrespective whether or not the entry on the register is granted.

12. Where an applicant contacts the Council before making an application, to ascertain the likelihood of the success of that application, the authority is expected to provide informal advice, for example, the conditions surrounding an application, the information required to be submitted and general guidance on making the application. There is further guidance relating to this in the fit and proper person determination policy.

13. Any preliminary advice the local authority provides is accounted for in the fee and will not be charged separately.

Revising Fees

14. The Council will review this fee policy after 12 months and will publish the revised policy. Any changes will be justifiable and reasonable, ensuring full transparency for the site owners.

15. The purpose of publishing the 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.

Amending conditions attached to an entry on a register

16. The Council may alter the conditions attached to an entry on a register (by adding new conditions or changing or deleting existing ones), following a review. Officers must notify the site owner of its interim decision (except in the case where it is deleting a condition) and consider any representations made by the site owner, before reaching a final decision. If the site owner is unhappy with the decision to alter, or not alter, the conditions, they will have a right of appeal to the First-tier Tribunal (Property Chamber).

17. There are no requirements for a site owner to make an application for a condition to be altered. Any costs involved with amending existing conditions, or adding new conditions to an entry, are factored into the application cost.

Payment of fees

18. As outlined above in paragraph 4, the Council is not required to 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.

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

An appointed manager fee

20. This is where the Council is provided with the site owner's consent to appoint an individual to manage a site. The costs associated with this should be reasonable and are recoverable from the site owner. These fall outside the application process.

21. Costs that can be recovered will depend on the agreement made between the Council and the site owner. Before entering into any discussions or agreements relating to the appointment of the manager, advice will be sought from the legal team.

Table A

Costs Associated with Fit & Proper person	Hrs	Rate Per hr	Total in £
Pre application advice (TO)	0.75	36.70	£27.53
Receipt of application and recorded on Idox. Acknowledgement email sent (TO)	0.25	36.70	£9.18
Check application is full and proper, complete, signed and fee paid. Enter all details on system (TO)	0.5	36.70	£18.35
Review application and make enquiries re FPP documents and declarations (including management and finances). Check documents and certificates (TO)	2.0	36.70	£73.40
Update Idox (TO)	0.5	36.70	£18.35
Time for reviewing any representations from applicant or third parties, including reviews carried out by manager or legal (CTL)	0.5	61.83	£30.93
Application of any conditions (TO)	0.5	36.70	£18.35
Grant of application (Final Notice) or serve Preliminary Notice (approved by CLT)	0.5	61.83	£30.93
Add relevant person's details onto public register (TO).	0.25	36.70	£9.18
Review Appeal paperwork Produce appeal response and relevant Notice, issue final decision (CTL)	0.25	61.83	£15.47
Oversight of appeal (CTL)	0.25	61.83	£15.47
Enforcement- removal from register or in relation to conditions (CLT)	0.5	61.83	£30.93
TOTAL			£298.07
TOTAL COST PER APPLICATION			£298

Footnote: TO= Technical Officer CLT= Commercial Team Leader

The above does not include any costs for travel to and from the site for time associated with the application and checking of conditions.

An assumption has been made that no cases will result in appeal to FPP.

General Procedures

22. The Regulations do not apply to 'non-commercial family-occupied sites'; these are sites that are:

- Not operated on a commercial basis
- Have caravans sited on a permanent basis
- Occupied by the occupier and one or more members of the occupier's family, or
- Occupied by a member of the occupier's family and one or more members of their family.

23. 'Commercial basis' means that payments either exceed the fair contribution towards the relevant costs (by a single payee) or the total amount payable by all the users exceeds the relevant costs for the site.

24. An occupier of an area that is, or is proposed to be, a relevant protected site can apply for inclusion on a register. On receipt of an application the Council may:

- Grant the application without conditions
- Grant the application with conditions, or
- Reject the application.

4. The application must include the following:

- a) Applicant's name and business contact details
- b) Where the applicant is not an individual, the name of the individual who is representing the applicant and their role in relation to the management of the site
- c) The name and address of the site
- d) Evidence of the applicant's legal estate or equitable interest in the site
- e) Confirmation that the applicant is the occupier (within the meaning of section 1 of the Caravan Sites and Control of Development Act 1960)
- f) Name and business contact details for anyone else who has a legal estate or equitable interest in the site
- g) The name and address of any other relevant protected site where the applicant holds a licence under the Caravan Sites and Control of Development Act 1960, or where they hold a legal estate or equitable interest or which the applicant manages
- h) Whether the application is for the applicant or a person that the applicant has appointed to manage the site
- i) Details of the person appointed, where this is relevant
- j) The day-to-day site management arrangements, including maintenance arrangements
- k) A criminal record certificate
- l) Status of the applicant/manager.

5. The Council must consider each application to determine if the applicant is fit and proper and can take into consideration:

- a) The ability of the applicant to secure the proper management of the site
- b) Previous convictions and legal and financial standing of the applicant (whether an individual or not)
- c) The conduct of any person associated, or formerly associated, with the applicant and the relevance of this on the fit and proper test
- d) Any other evidence relevant to the application.

6. Where an application has been approved but further information comes to light subsequently which would affect that registration, the Council can remove the person from the register or remove, vary or add conditions to an existing registration.

7. On receipt of an application the officer should determine each application as soon as reasonably practicable after it is made and can either:

- Grant it unconditionally and serve a final decision notice on the applicant, or
- Serve a preliminary decision notice on the applicant.

8. A preliminary decision notice must set out:

- The date on which the preliminary notice is served
- The preliminary decision
- The reasons for it
- The date of the proposed final decision
- Information about the right to make representations

- Where the preliminary decision is to refuse registration, then the consequences of this on the use of the land
- Where the preliminary decision is to impose conditions, the consequences of failing to comply with the condition(s).

9. An applicant can make written representations in relation to a preliminary decision notice within 28 days of the date of the notice. The Council must consider any representations prior to making a final decision.

10. The Council must make a final decision as soon as possible after the end of the consultation period and serve a final decision notice on the applicant. The final decision notice must set out:

- The date of the final decision
- The final decision
- The reasons for it
- When the decision will take effect
- Information about the right of appeal and timescale for appeals
- Where the decision is to refuse the application, the consequences of this refusal on the use of the land
- Where the final decision is to impose conditions, the consequences of failing to comply with the condition(s).

11. Where the Council proposes to revoke or amend the registration (point 6 above), we must serve a notice of proposed action on the registration holder. The content of the notice of proposed action is similar to the preliminary decision notice. The applicant can make written representations within 28 days, after which the Council must issue a notice of action (similar to the final decision notice).

12. The Council can withdraw a notice before it comes into effect.

13. The applicant can appeal to the First-tier Tribunal in relation to the decisions/notices issued by the Council.

Note: The regulations do not set out a timescale for appeals to the tribunal and it is a defence to show that the appeal period against any final decision had not yet expired.

14. The Council must establish a register of applicants who satisfy the fit and proper person test within the area of Pendle and make that register open for inspection and publish it online. Obviously, once applicants pass the test, their details should be added on to the register. Details must also be included relating to LA-appointed managers and rejected applications. Details can stay on the register for up to five years.

15. Details that must be held on the register relating to applicants are:

- The name and business contact details of the applicant
- The name and address of the relevant protected site to which the application relates
- The status of the applicant
- The first and last dates when the details will be held on the register
- Whether any conditions are attached to the registration
- Where conditions are attached then the register should include:
 - The number of conditions
 - The dates when the conditions apply
 - The date when any condition is varied or satisfied.

16. Details that must be held on the register where the Council has appointed a person to manage the site are:

- The name and business contact details of the person
- The name and address of the site that the person has been appointed to manage
- The status of the person
- The first and last dates when the details will be held on the register
- Whether any conditions are attached to the registration
- Where conditions are attached then the register should include:
 - The number of conditions
 - The dates when the conditions apply
 - The date when any condition is varied or satisfied.

17. Where an application is rejected, the following information must be included on the register:

- The name and address of the site to which the application relates
- Confirmation that an application in relation to the site has been rejected, and
- The date of rejection.

18. Where the Council appoints a manager for a site, they may recover the reasonable costs associated with making that appointment.

19. A relevant protected site other than a non-commercial family-occupied site may be occupied only where:

- The occupier is a fit and proper person to manage the site, or
- The person appointed by the occupier to manage the site is a fit and proper person, or
- The Council has, with the occupier's consent, appointed a fit and proper person to manage the site.

20. It is an offence, from 1 October 2021, for a site to be occupied without a fit and proper person in place. A person found guilty of an offence may be subjected to a fine on summary conviction.

21. There are various dates laid down in the regulations for the submission of applications by occupiers/managers, depending upon their circumstances. It is a defence for a person to show that they are complying with the timetable for submission of applications or have submitted a duly made application (which is being determined) or has some other reasonable excuse.

22 Other offences under the Mobile Homes Fit and Proper Person Regulations are:

- Withholding information from an application
- Providing false or misleading information within an application
- Failure to comply with a condition imposed by the regulations
- Failure to fulfil a function required by the regulations

23. Where there is no fit and proper person in place in relation to a site, the Council can apply to the First-tier Tribunal for an order to revoke the site licence.

24. Where an occupier is convicted of an offence under Regulation 11(1) and has been convicted on two or more previous occasions of the offence, the Council may apply to the court that is hearing the case to revoke the site licence.

APPENDIX 1- APPLICATION TO BE INCLUDED ON REGISTER OF FIT AND PROPER PERSONS



Application to be included on the Register of Fit and Proper Persons under the Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020

Section 1: Applicant	
1. Name of applicant:	
2. Business address:	
3. Telephone number	Landline:
	Mobile:
4. Email address:	
5. Correspondence address (if different to above):	
Section 2: Applicant's representative (to be completed where the details in section 1 do not relate to an individual e.g. limited company)	
6. Name of person completing application:	
7. Person's role/position:	
8. Individual's role in relation to the mobile home site:	
Section 3: Site details	
9. Name of mobile homes site:	
10. Address of mobile homes site:	
Section 4: Legal interest	
11. What is the applicant's legal interest in the mobile homes site?	
12. Evidence to support legal interest	

(detail evidence provided):	
13. Please confirm that the applicant is the occupier within the meaning of section 1 of the Caravan Sites and Control of Development Act 1960:	Yes / No (please circle)
14. Please provide the names and business contact details of any other individuals or organisations with a legal or equitable interest in the mobile homes site:	1.
	2.
	3. (continue on a separate sheet if necessary)
Section 5: Details of other sites where the applicant has an interest	
15. Please provide the name and address of any other mobile homes sites where the applicant has one of the following interests: — A licence under section 3 of the Caravan Sites and Control of Development Act 1960 — A legal or equitable interest, or — The applicant manages the site.	1. 2. (continue on a separate sheet if necessary)
Section 6: Status of applicant	
16. Is this application in relation to:	a) The applicant (as detailed in section 1) <input type="checkbox"/> or b) A person the applicant has appointed to manage the site <input type="checkbox"/>
17. If the answer to the above was b, then please provide the name and business contact details for the person appointed (otherwise go to section 7):	Name: Address:

	Tel No. E-mail address:
18. Is the appointed person an occupier of the site?	Yes / No (please circle)
19. Where the answer to Q17 is not an individual, please provide details of the individual officers who have an interest in the site management:	Name: Role: Name: Role: (continue on a separate sheet)
20. Which of the persons identified in Q19 will have day-to-day management of the mobile homes site?	Name: (if none of the above, then provide details of day-to-day management arrangements)
Section 7: Applicant is a relevant person and an individual (if not applicable, move to section 8)	
21. Whose will be responsible for day-to-day management of the mobile homes site?	Name: Status: Contact details: Relationship with applicant:
Section 8: Applicant is a relevant person but is not an individual	
22. Who will be responsible for day-to-day management of the mobile homes site?	Name: Status: Contact details: Relationship with applicant:
Section 9: Any others person involved in management	
23. Are there any other persons (not already covered in sections 6–8) who will be involved in the day-to-day management of the mobile homes site?	Yes / No (please circle) If 'yes', please provide details Name:

	<p>Status:</p> <p>Currently in post: Yes / No</p> <p>Business address:</p> <p>Tel. No.:</p> <p>E-mail address:</p> <p>Relationship to applicant:</p> <p>(if more than one, then provide details on a separate sheet)</p>
<p>24. For each person identified in Q23, please provide details of any mobile homes site where the person:</p> <p>a) Holds a licence held under section 3 of the Caravan Sites and Control of Development Act 1960</p> <p>b) Has a legal or equitable interest, or</p> <p>c) The applicant manages the site.</p>	
Section 10: Criminal record certificate	
<p>25. Please provide a criminal record certificate (no older than 6 months since issue) in relation to:</p> <p>a) The applicant (where that person is an individual);</p> <p>b) Any individual identified in sections 6–9 above.</p>	<p>Attached <input type="checkbox"/></p>
Section 11: Site management	
<p>26. Please provide details of how you intend to ensure compliance with the site licence conditions for the site detailed in section 3 (above)?</p>	
<p>27. Please provide details of planned maintenance for the site (short, medium and long term):</p>	<p>Please provide on a separate sheet.</p>
<p>28. Please provide details of the organisational arrangements for the site (include an organisational chart if relevant):</p>	

29. Please provide details of the funding arrangements for the management and maintenance of the site:	
30. Please provide details of the experience and competency of the personnel involved in the management of the site:	
Section 12: Other considerations – Applicant	
31. Can the applicant (or where the applicant is not an individual, any of the key management personnel of the applicant) confirm the following:	
Has not committed any offence involving fraud or other dishonesty, violence, arson or drugs or listed in Schedule 3 of the Sexual Offences Act 2003 (offences attracting notification requirements):	Yes / No
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:	Yes / No
Has not contravened any provision of the Equality Act 2010 in, or in connection with, the carrying on of any business:	Yes / No
Has not harassed any person in, or in connection with, the carrying on of any business:	Yes / No
Is not and has not been within the last 10 years, personally insolvent:	Yes / No
Is not and has not been within the last 10 years, disqualified from acting as a company director:	Yes / No
Has the right to work in the United Kingdom:	Yes / No
Is a member of a redress scheme for dealing with complaints in connection with the management of the site:	Yes / No
Has not had an application for inclusion on the Fit and Proper Persons Register rejected by another local authority:	Yes / No
	If 'yes', please state the reasons and the

		name of the local authority
Section 13: Applicant confirmation		
I confirm that the information contained within and attached to this application is accurate and true, to the best of my knowledge and ability. I confirm this knowing that withholding information or providing false or misleading information is an offence for which I may be liable to prosecution.		
Signed:		
Name:		
Date:		
I have attached the application fee of £298 with this application <input type="checkbox"/>		
Please return this application form with the appropriate attachments and fee to: Pendle Borough Council, Housing and Environmental Health, Town Hall, Market Street, Nelson, Lancashire, BB9 7LH		