

HAVANT BOROUGH COUNCIL
PUBLIC SERVICE PLAZA
CIVIC CENTRE ROAD
HAVANT
HAMPSHIRE P09 2AX



Telephone: 023 9247 4174
Fax: 023 9248 0263
Website: www.havant.gov.uk

LICENSING COMMITTEE AGENDA

Membership: Councillor Turner (Chairman)

Councillors Branson, Francis, Howard, Keast, Jenner, Kennett, Lowe, Milne, Moutray, Patrick (Vice-Chairman), Sceal, Scott, Stone and Wade

Meeting: Licensing Committee

Date: 14 September 2021

Time: 5.00 pm

Venue: Hurstwood Room, Public Service Plaza, Civic Centre Road,
Havant, Hampshire PO9 2AX

The business to be transacted is set out below:

Gill Kneller
Chief Executive

6 September 2021

Contact Officer: Mark Gregory (023) 9244 6232
Email: mark.gregory@havant.gov.uk

Public Attendance

Please note that the Hurstwood Room has very limited capacity to safely accommodate members of the public in a Covid secure manner. Please contact the named officer above if you wish to attend in person, otherwise we would encourage attendance virtually via the webcast on the Council's website.

Can Councillors Please Submit Any Detailed Technical Questions On The Items Included In This Agenda To The Contact Officer At Least 4 Hours Before The Meeting Starts.

PART 1 (Items open for public attendance)

- 1 Apologies**
- 2 Minutes** **1 - 4**
- 3 Matters Arising**
- 4 Declarations of Interests**

To receive and record any declarations of interests from members present in respect of any of the various matters on the agenda for this meeting.
- 5 Caravan Site Licensing (residential sites): Fit and Proper Determination Policy** **5 - 36**
- 6 Future Items**

Adoption of Processes for hearings under the licensing Act 2003 and Gambling Act 2005 – Date to be confirmed.

GENERAL INFORMATION

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Members of the public, County Councillors, and Non-Members of the Committee may make a verbal deputation to meetings of the Committee provided that it relates to an item on the Agenda for a particular meeting.

If there has been a deputation within six months of any previous appearance on the same or similar topic (irrespective of whether or not the member(s) of the deputation might be different) then no such new deputation will be received until that time limit has expired.

A request to make a deputation must be received by the Democratic Services Team not later than 48 hours before the start of the meeting (other than when the meeting is on a Monday, when notice has to be in by the previous Wednesday). A request to make a deputation may be sent by email to the address set out below.

A request to make a deputation may be sent to:

By Email to: DemocraticServices@havant.gov.uk

By Post to :

Democratic Services Officer
Havant Borough Council
Public Service Plaza
Civic Centre Road

Havant, Hants P09 2AX

Delivered at:

Havant Borough Council
Public Service Plaza
Civic Centre Road
Havant, Hants P09 2AX

marked for the Attention of the “Democratic Services Team”

Who To Contact If You Wish To Know The Outcome Of A Decision

If you wish to know the outcome of a particular item please contact the Contact Officer (contact details are on page i of the agenda)

THE BOROUGH COUNCIL OF HAVANT

At a meeting of the Licensing Committee held on 8 January 2020

Present

Councillor Keast (Chairman)

Councillors Carpenter, Howard, Inkster, Rennie, Robinson, Wade and Weeks

17 APOLOGIES

Apologies for absence were received from Councillors Hart, Kennett, Lloyd, Milne, Raines and Wade.

18 MINUTES

The Minutes of the meeting of the Licensing Committee held on 5 December 2019 were agreed as a correct record and signed by the Chairman.

19 MATTERS ARISING

There were no matters arising.

20 DECLARATIONS OF INTERESTS

There were no declarations of interests.

21 CHAIRMAN'S REPORT

The Chairman had nothing to report.

22 PRICES FOR TAXI AND PRIVATE HIRE LICENSING

Further to Minute 16/12/2019, the Committee reconsidered the increases to the prices for taxi and private hire licences for the financial year 2020/21 together with the findings of the task and finish group appointed to scrutinise the proposed changes.

The Committee noted that the task and finish group had held a meeting with the Environmental Health Manager (Food, Safety & Licensing) to discuss the proposed changes on 16 December 2019. The conclusion of the Panel was that the recommendations set out in the report submitted to the Committee on 5 December should be approved and that the impact of the changes be reviewed by the Committee within six months of the prices coming into effect.

In response to questions raised by the members, the Environmental Health Manager (Food, Safety & Licensing) advised that:

- (a) the processes undertaken by the team in relation to taxi and private hire licences, which could be recovered by licence fees, had been mapped and costed to ensure that the proposed fees were robust;
- (b) the fee for the change of name/address reflected the costs of the processes required to amend a licence and the fact that this work could be undertaken by any member of the team;
- (c) in most cases the Council was only requested to change an address or name in a licence once during its lifetime;
- (d) the proposed charge for a change of address/name did not appear unreasonable when compared with the fee set by the Government for the same process for a personal licence under the Licensing Act 2003. This fee (£10.50) was set in 2005 and was widely considered by Local Authorities as too low; and
- (e) although the benchmarking survey was useful in giving an indication of how the Councils fees and charges compared with other Councils, care should be taken when using this data as the Councils included in the survey could have different costs structures, staff structures, and processes.

Although some members of the Committee expressed concern about some of the proposed charges, a majority of the Committee accepted that, in view of the need to consult on the proposals within a tight timescale, the Committee did not, at this stage, have sufficient reasons to make any changes. However, the Committee considered that these changes should be monitored and the Committee undertake a more thorough review within six months of the fees coming into force.

RESOLVED that

- (A) the charges set out in Appendix 1 of the report submitted to the Committee on 5 December 2019 be approved for consultation;

- (B) the necessary advertisement be placed;
- (C) if no representations are received in response to the consultation referred to in (a) above, Full Council be RECOMMENDED to implement the charges as set out in Appendix 1 of the report submitted to the Committee on 5 December 2019 for the financial year commencing 1 April 2020; and
- (D) the impact of the proposed changes be reviewed by the Committee in October 2020.

The meeting commenced at 5.00 pm and concluded at 5.24 pm

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Chairman

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NON-EXEMPT

HAVANT BOROUGH COUNCIL

LICENSING COMMITTEE

14th September 2021

Caravan Site Licensing (residential sites): Fit and Proper Determination Policy

FOR DECISION

Portfolio Holder: Cllr Narinder Bains, Cabinet Lead for Community Safety and Organisational Development

Key Decision: No

Report Number: *HBC/259/2120*

1. Purpose

1.1. This paper is submitted to the Licensing Committee for policy decision and to meet a statutory requirement

2. Recommendation

2.1. Members are requested to approve the attached Caravan Site Licensing: Fit and Proper Person Determination Policy 2021-2026, and the appended Fee Procedure

3. Executive Summary

3.1. 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”). Local authorities are 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.

- 3.2. The Regulations, made on 23 September 2020, allow local authorities to receive applications from site owners, or the person appointed to manage the site, from 1 July 2021 up to and including 30 September 2021 for existing sites.
- 3.3. 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 to do so*” or has, with the site owner’s consent, “*appointed a person to manage the site.*”
- 3.4. 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.
- 3.5. 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. 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. This policy and the accompanying appendices will enable the council to apply The Regulations appropriately.

4. Additional Budgetary Implications

- 4.1. None

5. Background and relationship to Corporate Strategy and/or Business Plans

- 5.1. This policy contributes to achieving the theme titled ‘A safe environment, healthier and more active residents’, within the Havant Borough Council Corporate Strategy 2020-24

6. Options considered

- 6.1. Approve the policy and appended Fee Procedure. This will support the council in the decision making process for Fit & Proper Person applications, and provide clear instruction as to how we will approach situations where it is decided that an applicant has failed the fit and proper person test.
- 6.2 Do Nothing – This would mean we do not have a reliable decision making process in the event of a person applying who does not meet the fit and proper person criteria.

7. Resource Implications

7.1. Financial Implications

The financial implications are not significant. As per the Fee Procedure the average time taken to process a Fit and Proper Person application is approximately 9 hours. However by our estimation there is just 1 caravan site in the borough that this piece of legislation would apply to.

We are able to recover the cost of this work to the council by way of a licence fee. Details of this fee have been provided in the Fee Procedure and Fee Calculation included as appendices. We have determined that the fee to accompany an application would be £246, this is in line with other local authorities.

Section 151 Officer comments

Date: 12th August 2021

It is expected that the licence fee will cover the costs of administration. Therefore this proposal is within current budgets.

7.2. Human Resources Implications - None

7.3. Information Governance Implications

The council must 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 must be open to inspection by the public during normal office hours. This register also must be published online.

The register will provide a record of the outcome (as discussed above) of the fit and proper person tests the council have carried out for sites. There is a template available on the Government Guidance, and the register must include the following:

1. the name and business contact details of the person;
2. the name and address of the relevant protected site to which the application relates;
3. the status of the person (site owner or manager of the site);
4. the dates of the first and last day of the period for which the person's inclusion in the register has effect;
5. whether any condition is attached to the person's inclusion in the register, and where any condition is attached to the person's inclusion in the register
7. the number of any such conditions;
8. the dates of the first and last day of the period for which any such condition applies (if applicable), and the date any condition is varied or satisfied (if applicable).

The team will liaise with the Data Protection Officer to ensure all necessary steps are taken to ensure compliance with Data Protection legislation

7.4. Links to Shaping our Future Programme

No links, this relates to a statutory requirement

Shaping our Future Lead comments/sign-off

Date: 27th July 2021

There are no implications for the Shaping our Future Programme.

7.5. Other resource implications - None

8. Legal Implications

8.1. None

Monitoring Officer comments

Date: 21st July 2021

The Regulations require that the Council assess whether persons are fit and proper persons to manage non-commercially family occupied sites. In coming to a determination the matters identified at paragraphs 2 to 4 Schedule 3 of the Regulations must be considered. These matters are satisfactorily contained in the Guidance

9. Risks

- 9.1. If we do not implement a policy for this purpose, we would not have a reliable decision making process to use in the event of a person making an application, who does not meet the fit and proper person criteria.

10. Consultation

- 10.1. None required

11. Communication

- 11.1. Letters will be sent from Environmental Health to the existing site operator in the borough.

12. Appendices

- 12.1. Caravan Site Licensing: Fit and Proper Determination Policy
FIPP Fee Procedure
Fee calculation

13. Background papers

13.1. None

Agreed and signed off by:

Portfolio Holder: Narinder Bains 20/07/2021

Director: Simon Jenkins 02/07//2021

Monitoring Officer: Surinder Atkar 21st July 2021

Section 151 Officer: Mathew Tiller 12th August 2021

Contact Officer

Name: Sam Ings

Job Title: Environmental Health Service Manager

Telephone: 01730 234334

E-mail: Sam.Ings@easthants.gov.uk



**CARAVAN SITE
LICENSING F&PP
DETERMINATION
POLICY**
Agreed July 2021
Revision due June 2026

**Caravan Site Licensing: Fit and Proper Person
Determination Policy 2021-2026**

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Introduction

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”). Local authorities are 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 Regulations¹.

The Regulations, made on 23 September 2020, allow local authorities to receive applications from site owners, or the person appointed to manage the site, from 1 July 2021 up to and including 30 September 2021 for existing sites.

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 to do so*” or has, with the site owner’s consent, “*appointed a person to manage the site.*”

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. 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.

The Evidence

When conducting the fit and proper person assessment, the council must consider the following points relevant to the application:

1. **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.

¹ *i.e. it is a non-commercial, family occupied site under Regulation 3

(a) Competence to manage the site

This includes reviewing the competency of the appointed individual. The individual 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 should consider whether relevant management structures are in place and whether they are adequate to ensure effective management of the site. The council may want to ensure that the applicant has a robust management plan, this should also be reviewed 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 refuse removal.

It is advisable that the site is managed by an applicant based in the UK and a management structure would be unlikely to be suitable if the applicant is an individual, or a company (including its directors), which does not reside or have a permanent UK address. This is because there may be complex issues as a result of this, such as needing the court's permission to serve a claim in a foreign country. The applicant's interest in the land will also have an important impact, as would their financial standing, management structures and competence, all of which could 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 must 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.

Another consideration is if funding is through a third party (including an associated company), we should be wary if this is not disclosed as this will impact on our ability to deem whether the application is financially viable.

2. Personal information relating to the applicant concerned. This would include a DBS 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);
- (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).

Local authorities have 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. Local authorities may also rely on convictions by the courts as evidence of harassing behaviour which would reduce the risk of the council being successfully challenged on any refusal to approve an applicant on this basis.

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 it is still advisable that these be taken into consideration in the fit and proper person determination. 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. Local authorities may also wish to address any underlying issues by attaching conditions to the individual's entry on the register.

3. 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.

Items to take into consideration

4. "The applicant" is defined at paragraph 2 of the Regulations as "the person who makes an application under regulation 6".
5. The "relevant person" is also defined at paragraph 2 of the Regulations to mean "the subject of the fit and proper person assessment under Regulation 7".
6. 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.
7. Site owners may be required to provide details of any current or former associates of the relevant person in the application form. Those associates will not include other current joint owners as that information would have already needed to have been provided in their own application forms.
8. It is not routinely required to provide information of all current or past associates of the site owner. However, it is advisable that, prior to making any final decisions, the council considers the conduct of past and current associates relevant to that individual's application. The site owner can be asked to provide additional information during the application process.
9. Local authorities are required to establish whether an individual is considered to be an associate of the relevant person and then whether their conduct is relevant

to the application. 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.

10. The Regulations are drafted widely giving the opportunity for local authorities to take into consideration other relevant matters. However, a local authority should be cognisant that poor management practices do not affect a person's conduct, unless they are also a breach of the criminal or civil law. A person cannot be deemed unfit due to conduct, simply because of poor management, although that factor is highly relevant to determining any question of suitability or competence. However, all conduct is relevant in relation to the person's fitness to hold a licence and/or manage the particular mobile home site.
11. Local authorities are able to decide the specific matters they deem 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. Additionally, 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.
12. It is advisable that evidence is obtained by the council to support any additional matters that they require to be taken into consideration for the application. This is to mitigate any risks should they face being challenged at a tribunal because of their final decision. The evidence could include previous tribunal and court decisions, documents or records from Companies House, or other public bodies or financial institutions. Allegations which have not been investigated or documented may be difficult to use as evidence to support an authority's decision.

Applications

The Regulations use various terms in the application process and these are outlined below:

As mentioned earlier "Relevant person" is defined in paragraph 2 of the Regulations and is "the subject of the fit and proper person assessment under Regulation 7". Please note that this could be the site owner or person appointed to manage the site by the site owner.

"Relevant officer" is defined in paragraph 1 of Schedule 2 of the Regulations, where the applicant is a company, a relevant officer will be a director or other officer of the company; or, where the applicant is a partnership, a partner; or, where the applicant is a body corporate, a member of the management committee of that body.

"Required Information" is defined in paragraph 14 of Schedule 2 of the Regulations (even though the Regulations incorrectly state that this information is contained in paragraph 13) as: the person's name and business contact details; details of the person's role or proposed role in relation to the management of the site; where the person has not yet been appointed, the address, telephone number and email

address (if any) at which the person may be contacted in respect of the application; details of each relevant protected site (other than that to which the registration application relates) — for which the person holds a licence issued under section 3 of the Caravan Sites and Control of Development Act 1960, or in which the person has a legal estate or equitable interest, or which the person manages.

The application for inclusion in the fit and proper register, must therefore include the following:

The applicant and site details required

13. Details of the site and the applicant:

- (1) The applicant's name and business contact details.
- (2) Where the applicant is not an individual, the following information in relation to the individual completing the application on behalf of the applicant and each relevant officer:
 - (i) the person's name;
 - (ii) details of the person's role (if any) in relation to the management of the site.
- (3) The name and address of the site.
- (4) Evidence of the applicant's legal estate or equitable interest in the site.
- (5) Confirmation that the applicant is the occupier within the meaning of section 1 of the Caravan Sites and Control of Development Act 1960.
- (6) The name and business contact details of any other person that has a legal estate or equitable interest in the site.

14. The name and address of each other relevant protected sites:

- (1) for which the applicant holds a licence issued under section 3 of the Caravan Sites and Control of Development Act 1960;
- (2) in which the applicant has a legal estate or equitable interest; or
- (3) that the applicant manages.

15. The applicant must clearly specify whether their application is made in respect of either the applicant, or site owner, or the person that the applicant or site owner has appointed to manage the site.

Information relating to the site manager

16. In circumstances where a "site manager" has been appointed to manage a site more information is needed. The person who is applying for the site manager to be registered as a fit and proper person (the relevant person) must provide the following information: the site manager's name and details of that person's role (if any) in relation to the management of the site.

If the site manager has appointed or intends to appoint a further individual ("A"), 'Required Information' would also be needed from A. And where A is not a relevant officer of the site manager, the relevant officer to whom A is accountable. for the day-to-day management of the site, should be the one to provide the Required Information.

Additional information when the applicant is the relevant person and an individual

17. When the applicant is the relevant person, and is an individual, and the applicant has appointed, or intends to appoint, someone else (“B”) to be responsible for the day-to-day management of the site, ‘Required Information’ would be needed from B. If B is not an individual but is, instead, for example, a company, and B has appointed an individual (“C”) to do the day-to-day management, ‘Required Information’ would be needed from C. Where C is not a Relevant officer of a company, the relevant officer to whom C is accountable for the day-to-day management of the site would also need to provide the Required information.

Additional information where applicant is relevant person and not an individual

18. When the applicant is the relevant person but is not an individual and the applicant has appointed or intends to appoint someone else (“B”) to be responsible for the day-to-day management of the site, Required information would be needed from this person. If B is not a Relevant officer of the applicant the person to whom B is accountable for the day-to-day management of the site (“C”) would also need to provide the Required Information. Where B itself is not an individual, the individual (“D”) that B has appointed or intends to appoint to be responsible for the day-to-day management of the site would also need to provide the Required Information. Where D is not a Relevant officer of B, the relevant Officer to whom D is accountable for the day-to-day management of the site would also need to provide the Required Information.

19. It can be seen from the above that the Regulations prohibit the operation of a relevant protected site unless the site owner or its site manager (whatever the management structure might be) has been assessed by the local authority as a fit and proper person to do so. This has been included to ensure that consistent standards are applied to companies and other organisations that are not individuals.

Disclosure and Barring Service

20. 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 or individuals A, B, C or D as outlined above.

21. With reference to the above law, the Criminal r may be either basic or enhanced, at the discretion of the local authority.

22. 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.

Declaration

A declaration made and signed by the “appropriate person”, which means:

- (a) where the applicant is a company, a director or other officer of the company;
- (b) where the applicant is a partnership, one of the partners;

- (c) where the applicant is a body corporate and the conduct of the management of the body is vested in its members, a member;
- (d) where the applicant is not a body falling within (a) to (c) above, a member of the management committee;
- (e) where the applicant is an individual, that individual.

23. Where the applicant is not the relevant person, the declaration must confirm that the applicant has made all reasonable enquires into the matters mentioned in paragraph 9 of the Regulations and considerations relevant to the fit and proper person assessment as set out below.

24. The declaration should also state that the information provided in the application is correct and complete to the best of the applicant's knowledge and belief.

Considerations relevant to fit and proper person assessment

25. 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.

26. 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.

Decisions, notification and rights of appeal

27. 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.

28. On receipt of an application the council may:

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

Granting the application unconditionally

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

30. The final decision notice must clearly state:

- (a) the date the final decision notice is served;
- (b) the final decision;
- (c) the reasons for the decision;
- (d) when the decision is to take effect;
- (e) information about:
 - (i) the right of appeal to the First Tier Tribunal; and

(ii) the period within which an appeal may be made.

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

31. In some circumstances, the council can 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.
32. 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. It is therefore imperative that we have clear and justifiable reasons for attaching any condition(s) and that any conditions imposed can be enforced by the council.
33. Conditions will need to be clearly stated for the applicant's understanding and this will also allow for local authorities to ensure that they are enforceable.

An example of the requirements are included in the Table 1 below.

Table 1

Specific	The specific condition/s a site owner is being requested to address.
Measurable	The conditions required and the outcome(s) expected.
Achievable	The applicant should be reasonably expected to be able to achieve the condition. For example, it may not be reasonable to expect a site owner of one small site to have the same resources to introduce the same procedures as a medium sized company.
Realistic	The applicant should have a clear understanding of how the required outcome can be reached and that there are no circumstances or factors which would make the achievement of the outcome impossible or unlikely.
Timebound	A clear timescale in which the task/action must be completed.

What can a condition relate to?

34. The fit and proper person test is aimed at ensuring that the person managing the site is competent and the conditions should relate directly to the person's ability to secure the proper management of the site.
35. Where a person has contravened legislation, or committed offences set out in paragraph 2 above, it is not recommended that conditions are set in relation to those matters. This is because such a condition would be unlikely to meet the tests set out above in paragraph 33. For example, if a person has committed fraud or violence, that specific incident cannot be reversed by requiring the person to perform a specific task.
36. Local authorities are advised that, in cases where the person has committed those listed offences or contravened legislation, these breaches should be

considered, together with all the other information available, when reaching their preliminary decision.

37. An example of a condition could relate to the payment of an annual fee. A condition can also be set with respect to ensuring the relevant person has the ability to secure the proper management of the site. In summary, conditions can relate to any factors which are relevant to the person's competence to manage the site, the management structure, or funding arrangements for the site, an associated person's influence, and any other relevant factors.

38. **Example 1** - A local authority has evidence of a site owner's failure over a certain period of time to address residents' complaints. This is an example of poor management which could be resolved by the site owner implementing an adequate complaints procedure. A condition could be attached requiring the site owner to *"implement an effective and accessible three stage complaints process for residents by xx date and provide the LA with quarterly reports of complaints and outcomes, from that date and for the first year"*.

If the condition is met within the specified time frame, the local authority can record this in the register. If, at a future date, it is found that the site owner failed to implement a complaints procedure, a further opportunity to comply may be given and this could include a new condition of the site owner providing quarterly reports of complaints and outcomes for each year. The site owner could also be expected to complete a relevant "CPD customer service/Dealing with complaints" course by a certain period. However, should the local authority consider the actions as unlikely to achieve the desired outcome, the site owner could be removed from the register.

39. **Example 2** – If, when considering an application, certain documents or information are unavailable to the applicant, because of delays from third parties, the local authority may wish to attach a condition to the entry on the register that the site owner "is to provide the authority by registered post, with the original xx document by xx date".

40. **Example 3** - An associated person has been visiting the park and, through their action 'X', has caused distress to the residents impacting their well-being and security. A condition could be attached to the register requiring the site owner to put measure(s) in place by xxx date preventing the associated person, or any other person, from carrying out action X on the site.

Decisions not to include the applicant on the register

41. Should the council determine that the applicant does not meet the requirements, and attaching conditions would not be appropriate, the council can refuse to grant the application.

42. Where the council makes a decision to include the applicant on the register, subject to conditions, or not to include the applicant on the register, a preliminary decision notice to the applicant must be issued.

43. 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.

Right to make a representation

44. 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.
45. The council is obliged to consider and take any representations it receives into account before making a final decision.

Final decision notice

46. 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.
47. 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.

Appeals

48. 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 Local Authority. 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.

49. Where an applicant accepts the council's decision not to include the person originally stated in the application on the register, they will be required to seek alternative management arrangements to comply with the fit and proper person requirement. If they fail to do so they will be committing an offence.
50. An appellant will not be able to claim compensation for losses incurred pending the outcome of an appeal.

Withdrawal or amendment of notice

51. 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;
 - (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.
52. To withdraw or amend a notice, the council must serve notice to the person on whom the original notice was served.
53. There are no requirements for notices to contain specific information, however, it is recommended that a withdrawal or amendment notice should state:
- (a) That it is withdrawing/amending the original notice (a copy of the original notice should be attached for reference);
 - (b) the reasons for withdrawing the notice;
 - (c) the date it takes effect; and,
 - (d) the implications of the decisions in relation to the person's entry on the register.

Removal from the register

54. 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.
55. Local authorities must use their judgement when determining whether to review an entry and consider any subsequent actions are required. It is recommended that any such decision should 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 51 (a) to (c) above, we must serve a notice of any proposed action on the occupier.
56. The notice of proposed action must clearly 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.

57. 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. As good practice though, it is recommended that local authorities make the site owner or their manager aware of the decision in writing and also ensure the register is updated.

Notice of action taken

58. 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.

59. The council must, as soon as reasonably practicable after the end of the 28-day period, decide whether to carry out the proposed action.

60. Where the council decides to take the action, we 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.

61. The notice of action must 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.

Offences

62. There are 3 offences which can occur within the Regulations. They are as follows:

- Operating a site in contravention of the fit and proper person regulations - The site owner will have certain defences under the Regulations in any proceedings brought against them.

- 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.
- Failing to comply with a specified condition - The site owner will have certain defences under the Regulations in any proceedings brought against them.

63. Local authorities are 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.

Defences

64. 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.

Relevant periods in specific circumstances

65. The below table outlines limited circumstances where a site owner may have a defence.

Row	Circumstance	Relevant period for making an application in the circumstance
1	the occupier held a site licence immediately before the day on which regulation 4 (operating a site without being a fit and proper person) came into force on 1 October 2021.	From 1 st July 2021 before 1 October 2021, the day on which regulation 4 came into force
2	the period of a person’s inclusion in the register in relation to the site has come to an end other than as a result of action by the local authority under regulation 8(1)(a)(removal from the fit and proper register after new relevant evidence becomes available).	not less than two months before the end of the period of the person’s inclusion in the register
3	at the time that the occupier became entitled to within the period of 3 months possession of the land it was in use as a relevant protected site; and within the period of 28 days beginning with the day after the day on which the person became the occupier of the land the occupier notifies the relevant local authority of its intention to make an application under regulation 6 (application for inclusion in the register)	beginning with the day after the day on which the person became the occupier of the land
4	at the time that the occupier became entitled to possession of the land it was in use as a relevant	within the period of 28 days beginning with the day after the day on which the person became

	protected site; and the occupier does not give the notification referred to in row 3 above	the occupier of the land
5	a person appointed to manage the site no longer does so; and within the period of 28 days beginning with the day after the relevant day the occupier notifies the relevant local authority that the person no longer does so	within the period of 3 months beginning with the day after the relevant day
6	a person appointed to manage the site no longer does so; and the occupier does not give the notification referred to in row 5 above	within the period of 28 days beginning with the day after the relevant day
7	the breach of regulation 4(1) (operating a site without being a fit and proper person) arises because the local authority has removed a person from the register; and within the period of 28 days beginning with the relevant day in relation to the local authority's decision the occupier notifies the relevant local authority of its intention to make a new application under regulation 6 (application for inclusion in the register) in relation to the site	within the period of 3 months beginning with the relevant day
8	the breach of regulation 4(1) arises because the local authority has removed a person from the register; and the occupier does not give the notification referred to in row 7 above	within the period of 28 days beginning with the relevant day
9	the breach of regulation 4(1) (operating a site without being a fit and proper person) arises because the local authority has rejected an in-time application; and within the period of 28 days beginning with the relevant day in relation to the rejected application the occupier notifies the relevant local authority of its intention to make a new application under regulation 6	within the period of 3 months beginning with the relevant day
10	the breach of regulation 4(1) (operating a site without being a fit and proper person) arises because the local authority has rejected an in-time application; and the occupier does not give the notification referred to in row 9 above	within the period of 28 days beginning with the relevant day

The Fit and Proper Persons Register

66. The council must 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 must be open to inspection by the public during normal office hours. This register also must be published online.
67. The register will provide a record of the outcome (as discussed above) of the fit and proper person tests the council have carried out for sites. There is a template available on the Government Guidance, referred to as Annex A, and the register must 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).

68. 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.

69. 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.

70. 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.

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.

It must be noted that the name of the rejected applicant will not be included on the register. Local authorities 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.

71. Where the council has, with the site owner's consent, appointed a person to manage the site, the council must include the following information:

- (a) the name and business contact details of the person;
- (b) the name and address of the site which the person has been appointed to manage;
- (c) the status of the person;
- (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).

Monitoring and Review

This document will be reviewed every 5 years. Changes will also be introduced into this document where necessary to accommodate new legislation, guidance and local needs.

Environmental Health will work closely with other regulatory bodies to ensure effective coordination and collaboration to secure necessary regulatory compliance and outcomes.

We will consult and work with business representative organisations to ensure our services continue to improve and remain fit for purpose. We are committed to delivering excellent regulatory services and welcome constructive feedback and comments to further refine our service offer and will review how we are performing against the standards we have set ourselves.

For further information, please contact Environmental Health on 01730 234304, or ehealth@easthants.gov.uk



F&PP FEE PROCEDURE

**Agreed July 2021
Revision due June 2026**

Appendix 1

Caravan Site Licensing: Fit and Proper Person Fee Procedure

Contents

- 1 Introduction
- 2 Fees for Fit and Proper Persons Register Applications
- 3 Such other matters as the local authority considers to be relevant

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 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. Existing Site owners will be required to submit a completed application between 1 July and 1st October 2021 (3 months) and pay the fee, outlined below, to the council, which will also include any additional fees. New site owners must submit a completed application within 3 months of the date that they became responsible for the site.

Fees for Fit and Proper Persons Register Applications

Initial application fee

6. The local authority believes that fit and proper person assessment and/or checks to be included on the fit and proper register will take on average, a total of 540 minutes per application. This time of 540 minutes includes updating and publishing the register.
7. The local authority will take into account the following matters on which costs are incurred, or likely to be incurred (by various departments, including costs incurred by outsourcing contracts), when determining its fees for consideration of applications for entry on a fit and proper person register:

- (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) complete application form received and scanned
 - (e) updating files/ computer systems and websites;
 - (f) processing the application fee;
 - (g) land registry searches;
 - (h) Processing the application and reviewing necessary documents and certificates
 - (i) DBS check
 - (j) Determination F & P
 - (k) preparing preliminary and final decision notices;
 - (l) set conditions
 - (m) review by manager or lawyers; review any representations made by applicants or responses from third parties;
 - (n) updating the public register;
 - (o) carrying out any risk assessment process considered necessary and
 - (p) reviews of decisions or in defending appeals.
8. It is important that charges must be limited to recovering the costs of exercising the fit and proper person test function only and not other costs that have already been charged for by other service areas.
9. The fee is set at £246 for the fit and proper person application. Please see the table in Appendix 2: Fee Calculation, 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.

Additional considerations for an application fee:

10. The local authority 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 should be accounted for in the fee, irrespective whether or not the entry on the register is granted.
11. Where an applicant contacts the local authority 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, for example 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.
12. Any preliminary advice the local authority provides, prior to receiving an application, must be accounted for in the fee and cannot be charged separately.

Such other matters as the local authority considers to be relevant

Where no fee is applied

13. In certain circumstances, the local authority 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

14. This is where the local authority 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.

Revising Fees

15. The local authority may revise its fees procedure and will be required to publish the revised version. Any changes will need to be justifiable and reasonable, ensuring full transparency for the site owner.
16. The items that can be included in calculating the application fee are set out in Appendix 2: Fee Calculation.
17. The purpose of publishing the fee procedure 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

18. A local authority may alter the conditions attached to an entry on a register (by adding new conditions or changing or deleting existing ones), following a review. The local authority 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).

Site visits – Officer and travel time

19. Officer time can be considered as part of the fee, where site visits are required to ascertain whether or not site condition(s) are met. Travel time to and from the site, including fuel costs, can also be taken into account and could be calculated using a single value for travel costs which could be applied to all sites.

Payment of fees

20. As outlined above in paragraph 4, a local authority 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.

21. If a local authority decides not to approve an application the applicant is not entitled to a refund of the fee paid.

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<u>Action</u>	<u>Business Support</u>	<u>Private Sector Housing Officer</u>	<u>Private Sector Housing Team Leader</u>
Initial enquiries		45	
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;		60	
Sending out forms;	15		
Application form received and scanned	15		
Updating files/ computer systems and websites;		30	
Processing the application fee;	30		
Land registry searches;		15	
Processing the application and reviewing necessary documents and certificates;		60	
CRB Check		15	
Determination F & P		30	
Preparing preliminary and final decision notices;		15	
Set conditions		30	
Review by manager or lawyers; review any representations made by applicants or responses from third parties;			30
Updating the public register;	15		
Carrying out any risk assessment process considered necessary and		15	
Reviews of decisions or in defending appeals.		60	60
Total Time (minutes):	75	375	90
Cost:	£24	£163	£60

Grand total:

£246

<u>Role</u>	<u>Hourly Rate (including on costs)</u>
Business Support	£19
PSH Officer	£26
PSH Team Leader	£40

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