

Mobile Home Sites - Fit and Proper Person Application Fee Policy

Housing Committee Tuesday, 29 June 2021

Report of: Executive Head of Communities

Purpose: For decision

Publication status: Open

Wards affected: All

Executive summary:

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 introduce a fit and proper person assessment for the owners/operators of residential mobile home sites, to improve the standards of park home site management.

All mobile home site licence holders, except those that are 'non-commercial family occupied sites' must apply to the Council, between 1st July and 1st October 2021, to be assessed as a 'Fit and Proper Person' to operate a licenced mobile home site. Councils may charge a fee for processing applications to enable them to recover the costs of this activity. Before any fees may be imposed the Council must establish and publish a Fee Policy setting out the fees.

A site owner, or their appointed manager, can make an application and the Council must assess them and create a register of those whose applications are accepted. The assessment must include consideration of the applicant's legal interest in the site, their conduct e.g. any criminal record and the site's financial and management arrangements. The application may be approved; approved with conditions attached; or refused. Applicants will have a right of appeal.

A Fee Policy has been produced and this report is for the Committee to consider and agree the approach on the charging of fees for the Fit and Proper Person function.

This report supports the Council's priority of:

'Creating the homes, infrastructure and environment we need'

By ensuring those who operate mobile home sites are fit and proper persons for that role and are of sufficient integrity and good character to be responsible for the management of a regulated site, the Council helps to ensure that the sites are well managed and maintained and do not pose a risk to the welfare or safety of persons who live in the mobile homes on the site.

Contact officer

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Recommendation to Committee:

- A. Having considered the options for charging a fee for an application for a site owner to be assessed and included on the register, Committee adopts the Mobile Home Site (Fit and Proper Person) Fee Policy and the proposed application fees as set out in Option A of this report.
 - B. The Committee gives approval for the introduction of fees to commence from 1 July 2021.
 - C. The Committee delegate authority to the Executive Head of Communities, in consultation with the Chair, Housing Committee to make any minor amendments to the policy that may be necessary when reviewed annually.
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Reason for recommendation:

The adoption of Option A in the report ensures that any site operated on a commercial basis is subject to the same requirements, checks and associated fees.

The revenue income generated by the new FPPA Fees will support the service in delivery of this function and in achieving its budget requirements.

In addition to the periodic planned inspections of sites, at risk based intervals for site licensing purposes, mobile home residents will also benefit from the knowledge that the site operator has been assessed as 'Fit and Proper' for the role and responsibility that the position holds.

1.0 Introduction and background

- 1.1 The Mobile Homes, (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 ('the Regulations'), require that a local authority must be satisfied, that the owner of a mobile home site is fit and proper person to manage the site.
- 1.2 This requirement is to ensure that those responsible for operating the site licence and managing the mobile home site are of sufficient integrity and good character to be responsible for the management of a regulated site. It also helps to ensure they do not pose a risk to the welfare or safety of the people who occupying mobile homes on the site.

- 1.3 The Regulations make provision for the local authority to charge a fee for dealing with an application, undertaking an assessment of that person based on the information provided in the application and including their details in the register of 'Fit and Proper Persons' in relation to the management of sites. Before the Council may charge fees for this process, the proposed fees must be set out in a fee policy and adopted by the Council.
- 1.4 There are currently 29 mobile home sites in the district to which these regulations will apply.
- 1.5 The Fit and Proper Person assessment ('FPPA') must include consideration of the applicant's legal interest in the site, their conduct e.g. any criminal record and the site's financial and management arrangements. The application may be approved; approved with conditions attached; or refused. Applicants will have a right of appeal.
- 1.6 A relevant site operator/owner must apply for a FPPA within the period set down by the government. If they do not, this is an offence under the Regulations. The Council will send out reminders and application forms to those who do not apply, however, if they fail to submit the required application and information for assessment, the matter will be referred to the Council's Legal Services Team for the institution of legal proceedings.
- 1.7 In addition to charging an initial application fee for assessing whether a site owner is a 'Fit and Proper Person' who may be included on the register, councils may also charge an annual fee to cover the costs of monitoring the scheme and any conditions attached to an applicant.
- 1.8 Where a site owner or their manager fails the FPPA and they are unable to identify and appoint a suitable alternative manager, who must also undergo and meet the requirements of the FPPA, the Council could appoint a person to manage the site, with the consent of the site owner. The reasonable costs of this action can be recovered from the site.
- 1.9 These Regulations do not apply to family-occupied sites that are not operated on a commercial basis.
- 1.10 The Regulations require the Council to establish a register of 'fit and proper persons'. The register must be available for inspection by members of the public at the Council offices and available online. A person's inclusion in the register has effect for a maximum period of 5 years.
- 1.11 The Council may attach conditions to any entry on the register. These may include, but are not limited to, the requirement to pay an annual FPP fee, or the requirement for the relevant person to inform the council of any changes in circumstances in relation to the FPP assessment.

2.0 Timetable for Introduction

- 2.1 The Regulations were made in September 2020 and come into force on 1st July 2021. The MHCLG is expected to issue formal government guidance to local authorities to assist with the preparation of policies and processes for undertaking this role. The Guidance has not yet been issued, however draft guidance has been released has been taken into consideration in drafting the Fee Policy.
- 2.2 Local councils have until 1st July 2021 to prepare to receive applications from site owners/licence holders, to establish the processes for making and issuing decisions, to have adopted a fee policy and establish a fit and proper person register for their local area.
- 2.3 Site owners/licence holders will have 3 months from 1st July 2021 to submit completed applications to local authorities. The deadline for applications is 1st October 2021.

3.0 Fee Calculation

- 3.1 In setting its fees, the Council has had regard to the 'Fit and Proper Person Test Guide for Local Authorities on Setting Fees' issued by the Ministry of Housing, Communities and Local Government (2021) (currently only draft version available).
- 3.2 The calculations take into consideration the time spent by officers in carrying out certain operations and activities and these are set down in the draft guidance. As this is a new process for the Environmental Health Partnership, the times included for various activities in the calculations are based on our knowledge of other similar processes. It may transpire that the time apportioned for the activities has been underestimated, or overestimated and this will be taken into consideration when the fees are reviewed.
- 3.3 If the fees are introduced, the actual time taken to administer the scheme, undertake the assessments, maintain the register and to monitor any conditions attached to the applicant will be recorded, to establish an accurate record of officer time spent on each applicant. The policy will be reviewed annually and at the first review, the fee structure may need to be amended to take account of the findings of the recorded activities.
- 3.4 The Council is not permitted to make a profit from the FPPA fee income. The costs to which the Council may have regard when calculating the various fees are set down in the draft guidance produced by the MHCLG. Those costs include:
- 3.5 Dealing with enquiries, letter writing/telephone calls to make appointments, handling and investigating complaints, updating computer records, processing the fee, preparing reports, time spent consulting with other organisations and legal advice. All the fees are required to be calculated on a cost recovery basis and the full break-even analysis is provided in Appendix B.

4.0 Proposed Fees

4.1 The regulations permit the Council to charge two types of fee to cover its costs:

- Fit and Proper Person application fee - to cover the cost of assessing applications to be included on the fit and proper register.
- Fit and Proper Person annual fee - to cover the cost of monitoring the scheme or conditions attached to the register. Payment of the annual fee may also be required as a condition of inclusion in the register.

4.2 It is not anticipated that the annual monitoring of the register and any conditions attached to entries on it will take any significant time. It is proposed that the Council does not charge a FPP Annual Fee at this time. Once the scheme has been running for a year and the service has had the opportunity to record the time spent in various aspects of delivery, this will be reviewed. If appropriate, a FPP Annual Fee can be introduced when the policy is reviewed.

4.3 The proposed FPPA Application Fee is £386.

4.4 As these fees are yet to be introduced across the country, there is very little benchmarking information available. However, as a comparison we do know that the fees proposed in Reigate and Banstead BC are likely to be around £448 and in Mole Valley DC the proposal is for the same fee to be charged as in Tandridge, since the function will be delivered by the same service.

4.5 Officers propose to apply a condition to all registrations, which will place an obligation for the operator to notify us of any relevant offences relating to the 'relevant person' or any material change in the management arrangements for the site. This will place the obligation on them to keep us informed so we can take relevant action within the 5 year registration period if necessary.

5.0 Payment and Processing

5.1 Applications for a FPPA will not be processed until the appropriate fee has been paid. The application will be processed within 6 weeks of the Council receiving the full application together with all the necessary supplementary documentation. Fees are not refundable if the application is not granted.

6.0 Implementation

It is proposed that the Policy comes into operation on 1st July 2021, in line with the date the Regulations come into force and the Council is required to start processing applications.

7.0 Financial Implications

The introduction of FPPA fees will result in some additional income to the Environmental Health Service. However, the detailed scrutiny of FPPA applications required by the legislation, together with the monitoring of the FPP and any conditions attached to the register will place an increased demand on the resource of the Environmental Health Team.

8.0 Legal Implications

- 8.1 This is new legislation and will require those site owners to submit applications, declarations and supporting documentation that they do not currently need to submit.
- 8.2 The Council will then assess the application in accordance with the statutory requirements, government guidance issued by MHCLG for the setting of fees for mobile home site licensing functions.
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- 8.3 The legal basis for the powers referred to in this report are in the legislation listed in both this report and the policy.

Options

Option A (Recommended)

Committee approves the charging of FPPA application fees to the owners of all commercially operated residential sites by formally adopting the fee structure proposed in Option A in this report.

Option B

Committee approves the charging of FPPA fees to the owners of all commercially operated residential sites with the exception of those owners who operate sites with only one home, by formally adopting the fee structure proposed in Option B in this report.

Option C

Committee does not approve the policy to charge FPPA fees and decides that Tandridge District Council will carry out its FPPA function at no charge to the owners and operators of the sites in its area.

Risk Implications

Option A

Committee approves the requirement for FPPA fees to be charged to the owners of all commercially operated residential sites.

Risks

- The owners of sites that have only a small number of mobile homes may consider the fees disproportionate to the size of the site and the Council may receive complaints about this.

Opportunities

- The Council is required to receive applications from the owners of all commercially operated sites, regardless of the number of homes on a site. The FPPA assessment is the same for the owner of a site that has only one unit as it is for the owner of a site with 250 units. Charging a fee to all applicants, helps to offset the cost of the time spent processing and operating the scheme.

Option B

Committee approves the requirement for FPPA fees to be charged to the owners of all commercially operated residential sites except those owners who operate sites with only one mobile home.

Risks

- The Council will receive slightly less income towards the cost of delivering the FPPA function.
- The owners of sites with more than one mobile home may consider the charging policy inequitable and the Council may receive complaints.

Opportunities

- The Council may be viewed as applying a fairer licensing fee, related to the actual number of homes on a site and reducing the burden on smaller businesses.

Option C

Committee does not approve the policy to charge FPPA fees and decides that Tandridge District Council will carry out its FPPA function at no charge to the owners and operators of the sites in its area.

Risks

- The Council will receive no fee income to help offset the costs of service delivery of this additional statutory responsibility. It will have to consider ways to deliver this scheme from existing resources, which may require the reduction of another part of the service.

Opportunities

- There is no clear opportunity for the Council in continuing to deliver a free service, for which it has the discretion to make a charge.
- Site owners and operators will benefit from the provision of a service for which there is no charge.

Consultation

There is no legal requirement under the Regulations for public consultation in respect of the introduction of these fees and given the time restraints, it would not be feasible to undertake consultation prior to the date that the Council must be in a position to receive applications.

Communications

If the policy is adopted by the Council we will write to all the site owners/operators who manage a commercially operated residential site in the district, to notify them that the new policy is in operation and advise them of where and how they can make the required FPPA application and obtain further information.

We will request that they display a copy of the letter in their site office to inform the residents on the site. We will also inform them of when and how they will be able to pay the Annual FPPA Fee to the Council.

A notice will be posted on the TDC website to inform the public that the policy is in force. A copy of the full policy will be available to the public on request and on the website. The website will be updated to include information about the requirements of a responsible site operator to apply for a FPPA to be included on the register and advise how the application may be made.

Key implications

Comments of the Chief Finance Officer

Within the Budget setting 2021/22 no income nor costs have been included for the proposed schemes. Depending on which recommendation is adopted there will either be a small under or over spend incurred.

There are no capital implications of adopting any of the recommendations.

Comments of the Head of Legal Services

The Council is under a statutory duty to enforce the Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020. Without a fee policy in place, the Council would not be able to charge a fee for processing the fit and proper person application and therefore there would be an additional cost to the Council.

The recommendations support the proposed enactment of the Regulations so that the Council may properly apply them.

Equality

An Equality Impact Assessment of the proposed policy has indicated there are no significant equality implications for the Committee to consider in respect of this report and, therefore, no perceived impact to end users.

Climate change

There are no significant environmental / sustainability implications associated with this report.

Appendices

Appendix 'A' - Draft Mobile Home Sites (Fit and Proper Person Assessment)
Fee Policy June 2021

Appendix 'B' - Fee Structure Calculation

Background papers

None.

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