

	<h2 style="margin: 0;">Housing and Growth Committee</h2> <h3 style="margin: 0;">13th September 2021</h3>
Title	Determination and Fees Policy for Caravan Site Licensing Fit and Proper Person Test
Report of	Chairman of Housing and Growth Committee
Wards	All
Status	Public
Urgent	No
Key	Yes
Enclosures	Appendix 1: determination criteria for applications of relevant persons to be accepted onto the fit and proper person register in respect of mobile home site licensing.
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Summary

This report seeks approval from the Committee to agree the criteria and note the proposed fees for assessing the “Fit and Proper” status of managers of mobile home sites introduced by the Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020.

Officers Recommendations

1. To agree the determination criteria detailed in Appendix 1 for applications of relevant persons to be accepted onto the fit and proper person register in respect of mobile home site licensing. This will apply to all applications received from 1 July 2021 and applies to both existing site licence holders and any new site licence holders.
2. To note and agree the fee for applications by relevant persons to be accepted onto the fit and proper person register in respect of mobile home site licensing, which will be referred to Council for final approval. This will apply to all applications received from 1 July 2021 and applies to both existing site licence holders and any new site licence holders.

1. WHY THIS REPORT IS NEEDED

- 1.1 The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 (hereafter “the Regulations”) introduced a fit and proper person test for mobile home site owners or the person appointed to manage the site. The purpose of the fit and proper person test is to improve the standards of park home site management. The Regulations do not apply to non-commercial family owned sites.
- 1.2 The Regulations were made on 23 September 2020 and allow local authorities to prepare to receive applications from site owners by 1 July 2021. From that date and by 1 October 2021, all site owners must have submitted an application to be assessed as fit and proper persons.
- 1.3 Local authorities are able to charge two types of fees to cover their costs.

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

An annual fee to cover the cost of monitoring the fit and proper scheme or conditions attached to entries. The authority can decide and set the frequency of payments to cover their administrative costs.

All fees must be published in the authority’s Fees Policy document and must be transparent and reasonable.

2. REASONS FOR RECOMMENDATIONS

- 2.1 There are two mobile home sites in the borough that will be covered by the Regulations. This policy will support the recovery of costs associated with performing this new function and 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 some of whom are elderly, and some of whom may be from vulnerable groups.
- 2.2 The London Borough of Barnet has a legal obligation to determine fit and proper person applications. The fit and proper person test is relevant to a specific business sector, rather than to individuals or to non-commercial sites (e.g. family-only sites). Family-only sites were excluded from the regulations following MHCLG consideration.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 There are no alternative options for consideration as the Council has a legal obligation to determine fit and proper person applications under the Regulations.

4. POST DECISION IMPLEMENTATION

- 4.1 Application forms will be sent to the two sites within the Borough including details of the fee payable.
- 4.2 If applications are not returned the appropriate enforcement action will be taken having regard to the Regulatory Services enforcement policy.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 One of the 4 priorities in the Barnet Plan 2021 – 2025 is “Clean, safe and well run”, A place where our streets are clean and anti-social behaviour is dealt with so residents feel safe. Providing good quality, customer friendly services in all that we do. The implementation of this report will ensure that the mobile home sites have comprehensive and safe managers and management systems in place and as such help to keep two local communities cleaner and address anti-social behaviour such as fly-tipping, noise nuisance and parking.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 No additional resources are required as the additional work will be carried out by existing staff and the cost of which is recovered in the fees proposed.
- 5.2.2 The Regulations permit the local authority to determine the fee for an application or registration for someone to be added to the register. The application is not complete without the fee, a completed and signed application and submission of the requested documents. Failing to include any part of the application may mean that the site owner is in breach of the requirements of the Regulations.
- 5.2.3 To arrive at a fixed fee, the London Borough of Barnet has estimated the average time to conduct a fit and proper person assessment and checks required to be included on the register and has applied hourly DRS rates based on the posts that will be involved in conducting these assessments.
- 5.2.4 Charges are limited to recovering the costs of exercising the fit and proper person test function and not recovering other costs that have already been charged for by other service areas.
- 5.2.5 In the event that a prospective applicant contacts the London Borough of Barnet before making an application in order to ascertain the likelihood of the success of their application, the London Borough of Barnet is expected to provide informal advice.

5.2.6 An annual fee has also been set for maintaining the register and reviewing conditions linked to the Fit and Proper determination. This is due annually by 1st October. The annual fee is based on the basic cost of monitoring the fit and proper function plus any conditions attached to an entry on the register.

5.2.7 These fees will be reviewed annually as part of the Council’s review of all fees and charges.

5.2.8 The proposed fee structure is as follows:

Fee type	Fee
Application fee	£272
Annual fee to maintain register and monitor fit and proper status of site managers	£27
If the London Borough of Barnet decides not to approve an application	No refund
In the event that a request is made for a withdrawal of a fit and proper application within fourteen days of submission of that application	a refund may be applicable, based on the calculations of work already undertaken (up to a maximum of 50% of the application fee).
New manager	New application and full fee payable

5.3 Legal and Constitutional References

5.3.1 The Regulations require the authority to ensure it is satisfied the occupier of the site is a fit and proper person to manage the site or that it is satisfied a person appointed by the occupier to manage the site is a fit and proper person to do so, or that the authority has, with the occupier’s consent, appointed a person to manage the site.

5.3.2 The Regulations require the London Borough of Barnet 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.

5.3.3 Paragraph 7 of the Regulations state that when making a fit and proper person assessment the authority must have regard to matters set out in paragraphs 2-4 of Schedule 3 to the Regulations. Paragraph 7 also states that the authority may have regard to the conduct of any person associated or formerly associated with the relevant person if it appears to the authority that that person’s conduct is

relevant to the question of whether the relevant person is a fit and proper person to manage the site. The Regulations also allow the authority to have regard to any evidence as to any other relevant matter.

5.3.4 The authority is also required by the Regulations to establish and keep up to date a register of person who it is satisfied are fit and proper persons to manage a relevant protected site in its area. Such a register is to open to inspection by the public in accordance with the Regulations.

5.3.5 The Regulations state that a registration application must be accompanied by such fee as the authority may fix and that the authority may decide the amount and frequency of any additional payments by way of an annual fee. The authority may also fix different fees for different cases or description of cases. The authority is required to prepare and publish a fees policy and it may revise its fee policy and, where it does, it must publish the revised policy.

5.3.6 Where the authority has, with the occupier's consent, appointed a person to manage a site the Regulations allow the authority to recover its reasonable costs incurred, or to be incurred in making the appointment, from the occupier.

5.3.7 The Council's Constitution Article 7 outlines the responsibility of the Housing and Growth Committee, which includes housing matters including housing strategy, homelessness, social housing and housing grants, commissioning of environmental health functions for private sector housing.

5.3.8 The Constitution, Article 17 states changes to fees and charges should be included in the budget proposals submitted by theme Committees to the Policy and Resources Committee. The budget recommended by Policy and Resources Committee to Full Council will incorporate the latest projection of income from fees and charges. Full Council will approve all fees and charges as part of the budget report. As the fee policy for Caravan Site Licensing is an in-year fee and charge, it therefore needs to be considered by Council outside of the budget report and will therefore be reported to the October meeting of Council.

5.4 **Insight**

5.4.1 There are no insight considerations.

5.5 **Social Value**

5.5.1 Following a review of park homes legislation in 2017 the Government committed to introduce the fit and proper person test which was designed to improve the management of park homes and other residential mobile home sites, thereby protecting the residents who reside there. By introducing an assessment that the person responsible for managing the site is suitable to do so and of good character, this will help target and remove the worst offenders from the sector. Whilst to date Barnet has not had a significant problem with the two sites in the borough this test helps protect residents of park homes and other residential caravan sites, who are often elderly and vulnerable, from unscrupulous site owners.

5.6 Risk Management

5.6.1 There is a reputational risk to the Council if these Regulations are not enforced.

5.7 Equalities and Diversity

5.7.1 The fit and proper person policy relates to the consistent and transparent assessment of fit and proper applications.

5.7.2 Determining whether site owners/operators are fit and proper supports all residents of mobile home sites ensuring that they feel safer in their homes and more confident in the site managers.

5.8 Corporate Parenting

5.8.1 There are no specific implications for corporate parenting.

5.9 Consultation and Engagement

5.9.1 There is no duty to consult in respect to these Regulations.

6. BACKGROUND PAPERS

6.1 The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 [The Mobile Homes \(Requirement for Manager of Site to be Fit and Proper Person\) \(England\) Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2020/1000/contents/matter-1)

6.2 Mobile homes: a guide for local authorities on the fit and proper person test [Mobile homes: a guide for local authorities on the fit and proper person test - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/mobile-homes-a-guide-for-local-authorities-on-the-fit-and-proper-person-test)

6.3 Mobile homes: a guide for local authorities on setting fees for the fit and proper person test [Mobile homes: a guide for local authorities on setting fees for the fit and proper person test - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/mobile-homes-a-guide-for-local-authorities-on-setting-fees-for-the-fit-and-proper-person-test)

Appendix 1:

Fit and Proper Person Policy: Determination criteria for applications of relevant persons to be accepted onto the fit and proper person register in respect of mobile home site licensing.

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). The London Borough of Barnet is accordingly required to introduce a fit and proper person criteria 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 01 July 2021 up to and including 30 September 2021.

Under the Regulations the London Borough of Barnet 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 assessment and they are unable to identify and appoint a suitable alternative manager (who must pass the fit and proper person assessment), the London Borough of Barnet can appoint a person to manage the site but only with the consent of the site owner.

The fit and proper person assessment 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.

The Evidence

When conducting the fit and proper person assessment, the London Borough of Barnet 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. The local authority must (among other things) 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 proposed management structure and funding arrangements.

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

i. Competence to manage the site

This includes reviewing the competency of the appointed individual. The individual must have sufficient experience or have received sufficient training in site management and be fully aware of the relevant law as well as health and safety requirements.

ii. The management structure and funding arrangements for the site

The London Borough of Barnet must consider whether relevant management structures are in place and whether they are adequate to ensure effective management of the site. The applicant is expected to have a robust management plan which should address the following points:

- 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;
- refuse/recycling removal.

It is advisable that the site is managed by an applicant based in the United Kingdom and that a management structure would be unlikely to be considered 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 to ensure any issues with compliance with the Regulations can be easily managed and, if required, enforcement action taken in order to ensure the proper management of a site. 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 effectively manage the site.

iii. The proposed management structure and funding arrangements in place for the site

The London Borough of Barnet 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 and site owners should be able to explain how their funding arrangements are sufficient to ensure that the relevant person is able to secure the proper management of the site.

2. **Personal information relating to the applicant concerned.** This includes provision in the application of a Basic Criminal Record Certificate issued under section 113A (1) of the Police Act 1997 and will be required and should

demonstrate that the applicant:

- 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);
- 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;
- has not contravened any provision of the Equality Act 2010 in, or in connection with, the carrying on of any business;
- has not harassed any person in, or in connection with, the carrying on of any business;
- is not or has not been within the past 10 years, personally insolvent;
- is not or has not been within the past 10 years, disqualified from acting as a company director;
- has the right to work in the United Kingdom;
- 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).

The London Borough of Barnet has 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. The London Borough of Barnet may also rely on convictions by the courts as evidence of harassing behaviour which would reduce the risk of the local authority being successfully challenged on any refusal to approve an applicant on this basis.

The London Borough of Barnet may have records of previous harassment complaints made against a site owner or their manager. Even if no action was taken on these complaints, these will be taken into consideration in the fit and proper person determination. These complaints may identify further potential risks and can 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. The London Borough of Barnet may address any underlying issues by attaching conditions to the individual's entry on the register.

- 3. Rejection of an application by other local authorities.** The applicant must specify in their application to London Borough of Barnet if they had an application rejected by another Authority. The Council will make an enquiry with these local Authorities to determine the details and see if there is any relevance to the application submitted to the London Borough of Barnet.

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 reason(s) for the rejection.

Other items to take into consideration

1. 'The applicant' is defined at paragraph 2 of the Regulations as 'the person who makes an application under regulation 6'.
2. The 'relevant person' is defined at paragraph 2 of the Regulations to mean 'the subject of the fit and proper person assessment under Regulation 7'.
3. The conduct of any person associated or formerly associated with the relevant person (whether on a personal, work or other basis) is an important factor to be considered in the fit and proper person assessment.
4. 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 already have been provided in their own application forms.
5. It is not routinely required to provide information of all current or past associates of the site owner. It is advisable, however, that prior to making any final decisions, The London Borough of Barnet 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.
6. The London Borough of Barnet will be required to establish whether an individual is considered to be an associate of the relevant person and 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 on the quiet enjoyment of their home.
7. The Regulations are drafted widely to allow opportunity for local authorities to take into consideration other relevant matters. The London Borough of Barnet is mindful that poor management practices do not necessarily 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 this is highly relevant to determining any question of suitability or competence. All conduct is relevant in relation to the person's fitness to hold a licence and/or manage the mobile home site.
8. The London Borough of Barnet can decide the specific matters deemed 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 London Borough of Barnet believes to be of relevance to the application should primarily focus on the relevant person's conduct, competence and their suitability to manage the site.

9. The London Borough of Barnet aims to obtain evidence to support any additional matters that they require to be considered for each application. This is to mitigate any risks should the Council's final decision be challenged at a tribunal. The evidence could include previous tribunal and court decisions, documents or records from Companies House or other public bodies or financial institutions. It is not anticipated that allegations which have not been investigated or documented will be used as evidence to support an authority's decision.

Decisions, notification and rights of appeal

The London Borough of Barnet must decide on the application in a timely and practicable manner and either:

- Where the decision is to grant the application unconditionally and include the relevant person on the register for five years, The London Borough of Barnet will serve a final decision notice on the applicant.
- Where this is not the case, The London Borough of Barnet will serve a preliminary decision notice on the applicant.

On receipt of an application the local authority may:

- grant the application unconditionally;
- grant the application subject to conditions;
- reject the application.

Granting the application unconditionally

Where the London Borough of Barnet is satisfied that the applicant meets the fit and proper person test unconditionally, the applicant must be included on the register for such period as the authority may decide up to a maximum period of five years. The London Borough of Barnet will issue a final decision notice to the applicant to inform them of its decision.

The final decision notice must state:

- the date the final decision notice is served;
- the final decision;
- the reason(s) for the decision;
- when the decision is to take effect;
- information about the right of appeal to the First Tier Tribunal and the period within which an appeal may be made.

To include the applicant on the register subject to certain condition(s) or refusal of the application

In some circumstances, the London Borough of Barnet can specify that the individual for the fit and proper person test will only be successful if certain condition(s) are met. If these condition(s) are satisfied, the local authority can grant an application subject to those condition(s). The local authority can also grant an application for less than five years.

Conditions will need to be clearly stated for the applicant's understanding and this will allow the London Borough of Barnet to ensure that the condition(s) are enforceable.

In other cases, the London Borough of Barnet may determine the applicant does not meet the requirements and is unable to grant the application (with or without conditions) and so must refuse the application.

In this situation, a preliminary decision notice is to be served on the applicant that must set out:

- the date the preliminary decision notice is served;
- the preliminary decision;
- the reason(s) for the decision;
- the date it is proposed the final decision notice will have effect;
- information about the right to make written representations to the authority under paragraph 4(1) of Schedule 4 of the Regulations (currently a period of 28 days beginning with the day after the day on which the notice was served);
- 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;
- where the preliminary decision is to grant the application subject to conditions, the consequences of failing to comply with any condition.

The authority must consider and take any representations in to account before making a final decision notice or, where the applicant is already on the authority's register, taking any action to remove the applicant from the register or impose, vary or remove any condition in relation to their entry in the register.

As soon as reasonably practicable after the end of the period of representation, the London Borough of Barnet must make a final decision and serve the decision notice on the applicant.

The final decision notice must set out:

- the date the final decision notice is served;
- the final decision;
- the reason(s) for the decision;
- when the decision is to take effect;
- information about the right of appeal to the First Tier Tribunal and the period within which an appeal may be made.
- 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;
- where the decision is to grant the application subject to conditions, the consequences of failing to comply with any condition.

Removal from the register or addition/ variation of a condition in the register

If, after a person is included in the register, new evidence relevant to the person's inclusion becomes available, the London Borough of Barnet may decide to:

- remove the person from the register;
- impose a condition on the inclusion of the person in the register (regardless of whether there are conditions already imposed);
- vary a condition;
- remove a condition.

The London Borough of Barnet must use its judgement when determining whether to review an entry and consider any subsequent actions are required. Any such decision should be related to the person being a fit and proper person rather than to site licensing issues which are governed separately. If the London Borough of Barnet decides to take any of the actions listed in paragraph above, a notice of any proposed action will be served on the occupier. The notice of proposed action must clearly state:

- the date the notice of proposed action is served;
- the action the London Borough of Barnet proposes to take;
- the reason(s) for the action;
- the date it is proposed that the London Borough of Barnet will take the action;
- unless the notice of proposed action is in respect of the removal of a condition, information about the right to make written representations;
- where the proposed action is 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;
- where the proposed action is to impose a condition(s) on the inclusion of a person on the register or to vary a condition(s), the consequences of failing to comply with said condition(s).

A notice of proposed action is not required if the London Borough of Barnet 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, therefore a notice of proposed action is not required. The London Borough of Barnet will endeavour as good practice to make the site owner or their manager aware of the decision in writing and ensure the register is updated.

As soon as reasonably practicable after the end of the period of representation, the London Borough of Barnet must decide whether to take the action proposed and serve a notice of action where it decides to remove a person from the register or impose a condition or vary or remove a condition.

The notice of action must set out:

- the date the notice of action is served;
- the fact that the London Borough of Barnet have taken the action;
- the reason(s) for the action;
- the date on which the action was taken;

- unless the notice of proposed action is in respect of the removal of a condition, information about the right to make written representations and the time period for doing so;
- 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 the Regulations;
- where the action is to impose a condition(s) on the inclusion of a person on the register or to vary a condition(s), the consequences of failing to comply with said condition(s).

Data Sharing

Information obtained and used for the purpose of determining whether a site owner or manager is a fit and proper person may be shared with other councils, council departments or statutory bodies. Licence applicants agree to this when they sign the application for.

