

Fit and proper persons determination policy for mobile homes sites

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1.0 Introduction

- 1.1 The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 (hereafter referred to as “the Regulations”), require the manager of a “relevant protected site” to be a “fit and proper person”. The fit and proper person assessment applies to mobile home site owners, or the person appointed to manage the site, unless they are eligible for an exemption under Section 3 of the Regulations because they are a non-commercial family-occupied site.
- 1.2 A relevant protected site is a mobile homes site which requires a licence, and which is not solely for holiday purposes or is not restricted from being used all year round.
- 1.3 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 council sees no reason to believe that such individuals will not pose a risk to the welfare or safety of persons occupying mobile homes on the site.
- 1.4 For clarity, in this document, the “applicant” is the person who makes an application under regulation 6 and the “relevant person” is the individual who is the subject of the fit and proper person assessment.

2.0 The Fit and Proper Persons Register

- 2.1 The council will maintain a register of persons who we are satisfied are fit and proper persons to manage a site in East Herts. This register can be inspected by the public during normal office hours at our Wallfields office or via our website at any time.
- 2.2 The register will provide a record of the outcomes of the fit and proper person tests the council has carried out for sites. The register will 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 (up to a statutory maximum of five years)
 - (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).
- 2.3 Where there is a rejected application, the name of the rejected applicant will not be included on the register, however the following information will 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.
- 2.4 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.

3.0 Evidence-based approach to fit and proper persons checks

3.1 When conducting the fit and proper person assessment, the council will consider the points detailed in section 3 to be relevant to the application. In considering these points, the council will be mindful that each case must be considered on its individual merits and, where the circumstances demand, the decision makers may depart from the guidelines in this policy.

3.2 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. In determining this, the council will have regard to the following points.

(d) **Whether the person is competent to manage the site**

This includes reviewing the competency of the appointed individual and where necessary interviewing them. The council must have reasonable cause to believe the individual has either sufficient experience in site management or has received sufficient training and be fully aware of the relevant law as well as health and safety requirements.

(e) **The management structure for the site**

The council will consider whether suitable management structures are in place. The council must have reasonable cause to believe they are adequate to ensure effective management of the site. Things to be considered include, whether or not the applicant has a robust management plan that also 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.

(f) **Location of the manager**

The site must be managed by an applicant based in the UK. 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.

(g) **The funding arrangements in place for managing the site**

The applicant must have sufficient funds (or access to sufficient funds) to manage the site and comply with licence obligations. Evidence of these funds should be readily available.

If funding is through a third party (including an associated company), clear details must be provided to the council so that its ability to deem whether the application is financially viable is not compromised.

3.3 Personal information relating to the applicant concerned

To help inform the suitability of the applicant, the council is entitled to use personal records and information that may be available to it in determining applications. Checks will be carried out using publicly accessible Government registers, including, though not limited to, the 'bankruptcy and insolvency register'¹ and the 'disqualified directors register'², formal documents such as a British passport or UK birth/adoption certificate and the report from a 'basic' Disclosure and Barring Service (DBS) check.

Where another local authority has rejected an application for the relevant person to be included in a register, the council can consider that authority's reasons for the decision.

3.4 Conduct of the applicant

The council will investigate any conduct which could amount to harassment of the site residents by the site owner or manager. The council will also consider convictions by the courts as evidence of harassing behaviour.

Where the council has records of previous harassment complaints made against a site owner or their manager, even if no action was taken on these complaints at the time, the council will take these 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. Where relevant, the council may address any underlying issues by attaching conditions to the individual's entry on the register.

In addition, the Council will also consider further information from sources such as the Police (including abduction notices), Children and Adult Safeguarding Boards (or other bodies with a similar function), other licensing authorities and statutory agencies where appropriate.

3.5 Conduct of any person associated with the relevant person

¹ <https://www.gov.uk/search-bankruptcy-insolvency-register>

² <https://www.gov.uk/search-the-register-of-disqualified-company-directors>

A relevant associate is 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.

The council will consider the conduct of any relevant associate (whether on a personal, work or other basis) when undertaking the fit and proper person assessment.

3.6 Other relevant matters

The council will also consider the following specific matters relevant to the fit and proper person application:

- (a) current or previous issues, or events, that have occurred in the past ten years that have occurred in relation to the site or any other mobile homes owned or managed by the site owner or site manager in East Hertfordshire or any other local authority area
- (b) the site owner's conduct regarding other business, outside of the mobile homes sector, that is relevant to the determination of whether someone is a fit and proper person, as this could also have implications on the financial and management arrangements of the site in question
- (c) any matters which the council believes to be of relevance to the application which primarily focus on the relevant person's conduct, competence and their suitability to manage the site, including but not limited to convictions and foreign convictions, cautions, Police warnings, arrests, fixed penalty notices and impending prosecutions.

In relation to convictions, the council will consider whether the conviction is spent or unspent, but only in so far as it is relevant to an application for inclusion on the register.

3.7 Determination of applications

Any information gathered will be used to help determine 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) does not give the council cause to reasonably question, for any other reason, that the person is fit and proper
- (h) has the right to work in the United Kingdom and
- (i) 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).

Where an applicant has failed at least one of the criteria above, they will generally not be deemed to be a 'fit and proper person' for the purposes of this policy although this policy provision does not fetter the decision maker's ability to determine the application on its own merits.

3.8 Rejected applications

Applications from persons who do not pass the fit and proper assessment by virtue of not meeting the criteria set out above will be rejected and the person will not be able to manage the site.

Rejected applications will be centrally recorded and will include the details of the person involved and the reasons for the rejection. Rejected applications will be shared with other local authorities, subject to requirements of data protection legislation being met.

The council will have regard to rejected applications made by any other local authority.

4.0 Applications

- 4.1 The application for inclusion in the fit and proper persons register must include the required information, which will be identified on the council's website, and associated fee. Failure to provide either will result in the application being refused.
- 4.2 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.

5.0 Criminal record certificate(s)

- 5.1 A Disclosure and Barring Service (DBS) certificate or Criminal Records Certificates (issued under section 113A (1) of the Police Act 1997) will be required for:
- (a) the relevant person, where they are an individual; and
 - (b) for each individual to whom the applicant is required to provide information for under paragraph 10(2) or (5), 11 or 12 of the Regulations.
- 5.2 The Disclosure and Barring Service check should be a "basic" check as opposed to an "enhanced" check and can be undertaken via the GOV.UK website.
- 5.3 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.

6.0 Decision makers

6.1 Head of Housing and Health

The Head of Housing and Health manages a number of service areas within East Herts Council including Environmental Health. The council's constitution affords the Head of Housing and Health delegated authority to undertake certain functions with regards to this Policy, including refusing an application to be included on the register.

6.2 Service Manager – Environmental Health

The Service Manager – Environmental Health manages the Environmental Health Team on a day-to-day basis. Through delegated authority from the Head of Housing and Health, they will determine applications which either meet the conditions set out in this determination policy or can meet the conditions set out in the policy if additional conditions are added to the register entry; this includes setting those conditions.

7.0 Decisions and notifications

7.1 On receipt of a valid application the council will:

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

7.2 Granting the application unconditionally

- (a) Where the council is satisfied that the applicant meets the fit and proper person test unconditionally, the applicant will be included on the register for up to a statutory maximum of five years. The council will also issue a final decision notice to the applicant to inform them of its decision.

7.3 Granting the application subject to certain condition(s)

- (a) Where the council considers an applicant would meet the fit and proper person test if certain conditions are met, the council will grant an application subject to those condition(s). In this case, the council will send a preliminary decision notice to the applicant.
- (b) The fit and proper person test is aimed at ensuring that the person managing the site is competent and the conditions will relate directly to the person's ability to secure the proper management of the site.
- (c) Where additional conditions are required, the council can also grant an application for less than five years.
- (d) An applicant can appeal against the decision to attach (or vary) any condition to an entry on the register.

7.4 Decisions not to include the applicant on the register

- (a) Should the council determine that the applicant does not meet the requirements, and attaching conditions would not be appropriate, the council will refuse to grant the application and send a preliminary decision notice to the applicant.
- (b) Where an applicant is refused entry onto the register, the site owner or manager 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.
- (c) Where a site owner or their manager 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.

7.5 Right to make a representation

- (a) 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.
- (b) The council will consider and take any representations it receives into account before making a final decision.

7.6 Final decision notice

- (a) The council will, 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.

8.0 Duration of time on the fit and proper persons register

- 8.1 Where the council is satisfied that the applicant meets the fit and proper person test unconditionally, the applicant will be included on the register for the statutory maximum of five years.
- 8.2 Where additional conditions are required to facilitate an applicant's inclusion on the fit and proper persons register, the council may grant an application for less than five years.

8.3 Where an application is for less than five years, the length of time will be determined by the conditions to which entry onto the register was granted. For example, a person who has the right to work in the UK for two years, would only be entered onto the register for a period of two years.

9.0 Appeals

9.1 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 council. These include:

- (b) including the relevant person on the register for an effective period of less than five years
- (c) including the relevant person on the register subject to conditions and
- (d) rejecting the application.

9.2 An appellant will not be able to claim compensation for losses incurred pending the outcome of an appeal.

10.0 Withdrawal or amendment of notice

10.1 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.

10.2 Where the council decides to withdraw or amend a notice, the council will serve notice to the person on whom the original notice was served stating:

- (a) that it is withdrawing/amending the original notice (a copy of the original notice will 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.

11.0 Removal from the register

11.1 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.

11.2 When considering removal from the register 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.

11.3 Where action is considered necessary the council will serve a notice of any proposed action on the occupier clearly stating the reasons.

11.4 A notice of proposed action is not required to remove a condition attached to an entry as this is viewed widely as being a positive step, which is unlikely to be opposed. Instead, the council will make the site owner or their manager aware of the decision in writing and also ensure the register is updated.

11.5 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.

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

11.7 Where the council decides to take the action, they will serve a further notice on the occupier, indicating the action that has been taken, within the period of five working days beginning with the day after the day on which the action was taken.

12.0 Offences

12.1 There are three offences within the regulations. They are:

- (a) operating a site in contravention of the fit and proper person regulations
- (b) withholding information or including false or misleading information in the registration application
- (c) failing to comply with a specified condition.

12.2 A site owner found guilty of any of the above offences will be liable on summary conviction to a level 5 (unlimited) fine.

13.0 Fees

13.1 A completed application will only be considered where the correct fee is included with the application.

13.2 When setting the fees for consideration of applications for entry on a fit and proper person register, the cost incurred by the council on the following will be taken into account:

- (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) updating files and/or the council's website
- (e) processing the application fee
- (f) land registry searches
- (g) time for reviewing necessary documents and certificates
- (h) preparing preliminary and final decision notices
- (i) review by manager or lawyers; review any representations made by applicants or responses from third parties
- (j) updating the public register

- (k) reviews of decisions or in defending appeals
- (l) all other tasks reasonably undertaken by the council in connection with processing, determining and/or publishing the outcome of an application.

13.3 Where the council is provided with the site owner's consent to appoint an individual to manage a site, the full costs associated with this will be recoverable by the council from the site owner.

13.4 Where any condition is attached to the person's inclusion in the register, the council will charge an additional annual fee to cover the costs it incurs undertaking this role. This annual charge will take into account the following:

- (a) 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
- (b) handling enquiries and complaints
- (c) updating files/ computer systems and website if appropriate
- (d) processing the annual fee
- (e) time spent reviewing necessary documents and certificates
- (f) time spent reviewing any representations from an applicant or third parties, including reviews carried out by manager or lawyers
- (g) carrying out risk assessment where considered necessary
- (h) time spent on consulting the site owner and third parties
- (i) time spent on meetings/discussions and in giving informal advice and assistance to site owners
- (j) monitoring and enforcement of fit and proper person requirements
- (k) all other tasks reasonably undertaken by the council in connection with this function.

13.5 Fees associated with administering the fit and proper person checks will be reviewed annually in line with the council's existing Fees and Charges Policy.

13.6 If the council decides not to approve an application the applicant is not entitled to a refund of any part of the fee paid and/or invoiced.

13.7 If the applicant decides to withdraw their application after the council has started processing the application, the applicant is not entitled to a refund of any part of the fee paid and/or invoiced.

14.0 Renewals

14.1 In order to comply with the fit and proper person requirement, a site owner must, at least two months before the period of being on the register as a fit and proper person comes to an end, submit a new application for the person (or alternative) to be included on the register.

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