

BROXTOWE BOROUGH COUNCIL

MOBILE HOMES ACT 2013

Mobile Homes Fit and Proper Persons Policy

September 2021

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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 Regulations (i.e. it is a non-commercial, family occupied site under Regulation 3).

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.

A local authority 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 local authority 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 good character. 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.

Matters for Consideration

When considering whether a person is 'fit and proper' the local authority must have regard to the suitability of the person concerned ('the relevant person'). Schedule 3 paragraphs 2 to 4 of the Regulations make reference to those matters that **must** be considered by the local authority as part of any application. These include;

Whether the relevant person is able to secure the proper management of the site. This includes, but is not limited to;

- a) compliance with the site licence;
- b) the long term maintenance of the site
- c) whether the relevant person has sufficient level of competence to manage the site;
- d) the management structure and funding arrangements for the site or proposed management structure and funding arrangements. The local authority 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.

Other matters to be considered are whether the relevant person has:

- e) committed any offence involving fraud or other dishonesty, violence, firearms, arson or drugs or listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements);
- f) has 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;
- g) has contravened any provision of the Equality Act 2010 in, or in connection with, the carrying on of any business;
- h) has harassed any person in, or in connection with, the carrying on of any business;
- i) is, or has been within the past 10 years, personally insolvent;
- j) is, or has been within the last 10 years, disqualified from acting as a company director;
- k) whether the relevant person has the right to work within the United Kingdom;
- l) whether any other local authority has rejected an application for the responsible person to be included in a register;
- m) is a member of any redress scheme enabling complaints to be dealt with in connection with the management of the site (if this is in place).

The local authority may also have regard to the conduct of any person associated or formerly associated with the relevant person (whether on a personal, work or other basis) 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 relevant protected site or proposed relevant protected site (as the case may be). 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.

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 local authority being successfully challenged on any refusal to approve an applicant on this basis.

The local authority 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.

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 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.

The local authority 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), the local authority should be wary if this is not disclosed as this will impact on the local authority's ability to deem whether the application is financially viable.

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.

Applications

A specific application form will be required.

Applications must be accompanied by a criminal record check and proof of right to work in the UK. 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. The Criminal record certificate may be either basic or enhanced, at the discretion of the local authority and it is proposed that Broxtowe require an enhanced criminal record check. 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.

Once an application has been received the local authority may:

- a) Grant the licence unconditionally;
- b) Grant the licence subject to conditions;
- c) Reject the application.

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.

Decisions

The fit and proper person test is aimed at ensuring that the person managing the site is competent and any conditions should relate directly to a person's ability to secure the proper management of the site.

Where a person has contravened legislation, or committed the specific offences listed (e – g) it is not recommended that conditions are set in relation to those matters as any condition cannot be reversed by requiring the person to perform a specific task (e.g. fraud).

As soon as is reasonably practicable after a full and complete application is received (including the relevant fee) the local authority must make a decision on the application and either;

- a) Where the decision is to grant the licence unconditionally and to 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.

Once a full and completed application has been received by the authority, the nominated case officer will review the information and obtain any further information deemed relevant to the application. A consultation in respect of the applicants will take place with the neighbouring authorities, the Police, the fire authority and any authority where a licence is currently held.

The nominated officer will then prepare a case file for review by the relevant and authorised senior officer. The authorised senior officer may authorise that an application be granted unconditionally or subject to conditions.

Where an application is to be rejected a preliminary decision notice will be issued and the matter will be referred to the Licensing and Appeals Committee. Refusal/Rejection will only take place if discussions with the site owner/applicant cannot agree an alternative manager.

Removal from the Register - 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, after a person is included in the register, and new evidence relevant to the person's inclusion becomes available, the local authority 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.

If the local authority decides to take any further action above, the local authority must serve a notice of any proposed action on the occupier.

Appeals

Any preliminary decision notice will be in accordance with the Regulations and will provide the applicant with 28 days, beginning with the day after that day on which the notice was served, to make written representations to the authority.

Once written representations have been received the authority may then make a final decision which may include approving an application subject to specific conditions. The local authority is obliged to consider and take any representations it receives into account before making a final decision.

Where the authority may seek to remove a relevant person from the register or to impose further conditions a notice of proposed action will be issued in accordance with the Regulations. Again, any relevant person may make written representations within 28 days of such a notice being issued.

The local authority may withdraw or amend;

- a) A preliminary decision notice before the service of the final decision notice;
- b) A final decision notice before the decision to which it relates takes effect or;
- c) A notice of proposed action before the proposed action is taken

A person on whom a final decision notice is served may appeal to a First-tier Tribunal (FTT) against;

- a) Any decision to include the relevant person on the register for an effective period of less than 5 years,
- b) Any decision to include the relevant person on the register subject to conditions and;
- c) Any decision to reject the application.

A person on whom a notice of action is served may appeal to the FTT against;

- a) Any decision to remove the relevant person from the register;
- b) Any decision to impose a condition on the inclusion of the relevant person in the register and;
- c) Any decision to vary a condition

No compensation may be claimed for loss suffered, pending the outcome of the appeal, in consequence of the local authority making a final decision or taking action relevant to regulation 8(1)(a)(b) or (c).

Register

The Regulations require a local authority to establish and keep up to date a register of persons they are satisfied are fit and proper persons to manage a relevant protected site within their area and to make the register open to inspection by members of the public at the offices of the local authority during normal office hours.

The authority must also publish the register online and the contents of the register will be in accordance with the Regulations.

A person's inclusion in the register has effect for a maximum period of 5 years.

Details of the rejected application (not the name of the individual applicant rejected) 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.

Fees

Regulation 10 permits the local authority to charge a fee for the processing of applications and this fee is contained within the Caravan Site Fees Policy (as updated). This is to cover the cost of processing applications and will be reviewed annually.

The authority may also decide the amount and frequency of any additional payments required by way of an annual fee. The authority does not intend to charge an additional annual fee at this time (an annual fee for site licensing is already in place) and this will be subject to review. Any fee that is applied will be done so in accordance with the fees policy and relevant guidance.

Where the authority has, with the occupier's consent, appointed a person to manage a site, the local authority will recover from the occupier the reasonable costs incurred or to be incurred in making the appointment in accordance with Regulation 10.

Offences

An owner (occupier) of land commits an offence if he causes or permits any part of it to be used as a relevant protected site (which falls within the scope of the Regulations) without the manager of the site being registered with the local authority as a fit and proper person.

An applicant also commits an offence if he;

- a) Withholds information from a registration application or;
- b) Includes false or misleading information in a registration application or;
- c) Fails to comply with a condition imposed under Regulation 6(2)(b) or Regulation 8(1).

An owner (occupier) of land who is guilty of an offence is liable on summary conviction to a level 5 fine (unlimited).

Where an owner (occupier) of land who holds a site licence in respect of that land contravenes the relevant Regulations, the FTT may, on application by the authority, make an order revoking the site licence in question on the day specified in the order.

Where:

- (a) An owner (occupier) of land who holds a site licence in respect of that land is convicted of an offence under Regulation 11 for a contravention of the fit and proper person requirement and;
- (b) Has been convicted on two or more previous occasions of the offence in relation to that land,

The Court before which the occupier is convicted may, on application by the local authority, make an order revoking the site licence in question.