

Agenda

Environment and Licensing Committee

Date: **Tuesday 10 August 2021**

Time: **4.15 pm**

Place: **Council Chamber**

For any further information please contact:

Democratic Services

committees@gedling.gov.uk

0115 901 3844

Environment and Licensing Committee

Membership

Chair Councillor Marje Paling

Vice-Chair Councillor Nicki Brooks

Councillor Pat Bosworth
Councillor Roxanne Ellis
Councillor Des Gibbons
Councillor Julie Najuk
Councillor Martin Smith
Councillor Sam Smith
Councillor Clive Towsey-Hinton
Councillor John Truscott
Councillor Paul Wilkinson

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AGENDA

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- 1 **Apologies for Absence and Substitutions.**
- 2 **To approve, as a correct record, the minutes of the meeting held on 13 July 2021** 5 - 7
- 3 **Declaration of Interests.**
- 4 **Mobile Homes Fit and Proper Policy** 9 - 20
Report of the Food, Health and Housing Manager
- 5 **Any other item which the Chair considers urgent.**
- 6 **Exclusion of the Press and Public.**
To move that under Section 100(A)(4) of the Local Government Act 1972 the public and press be excluded from the meeting during consideration of the ensuing report on the grounds that the report involves the likely disclosure of exempt information as defined in Paragraph 7 of Part 1 of Schedule 12A of the Local Government Act 1972.
- 7 **Change of Circumstances of Hackney Carriage/Private Hire Driver - ALB** 21 - 23
Report of the Corporate Director Environment, Communities and Leisure.

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MINUTES ENVIRONMENT AND LICENSING COMMITTEE

Tuesday 13 July 2021

Councillor Marje Paling (Chair)

Present:	Councillor Nicki Brooks	Councillor Martin Smith
	Councillor Pat Bosworth	Councillor Sam Smith
	Councillor Roxanne Ellis	Councillor Clive Towsey-Hinton
	Councillor Des Gibbons	Councillor John Truscott
	Councillor Julie Najuk	Councillor Paul Wilkinson

Officers in Attendance: C Allcock, A Dubberley and P Gibbs

10 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS.

Apologies for lateness had been received from Councillor Sam Smith.

11 TO APPROVE, AS A CORRECT RECORD, THE MINUTES OF THE MEETING HELD ON 15 JUNE 2021

RESOLVED:

That the minutes of the above meeting, having been circulated, be approved as a correct record.

Councillor Gibbons joined the meeting.

12 DECLARATION OF INTERESTS.

None.

13 AMENDMENT OF HACKNEY CARRIAGE VEHICLE LICENCE CONDITIONS

Consideration was given to a report of a report of the Head of Environment which set out a request from a licensed driver for the Council to consider removing the requirement to display a roof light on a Hackney Carriage.

The Committee heard from the licence holder, Matthew Francis, on his reasons for making the request.

Following debate, the Committee resolved not to accept the recommendation of the Head of Environment to refuse the request to alter the licence conditions for Hackney Carriage Vehicles.

An alternative proposal to instruct officers to start a public consultation on whether to remove the requirement for hackney carriages to display a roof sign when operating was moved and duly seconded and it was

RESOLVED:

To instruct officers to commence a public consultation on whether to remove the requirement for Hackney Carriages to display a roof sign when operating, the results of which would be brought to a future meeting.

14 ANY OTHER ITEM WHICH THE CHAIR CONSIDERS URGENT.

None.

15 EXCLUSION OF THE PRESS AND PUBLIC.

RESOLVED:

That, the Members being satisfied that the public interest in maintaining the exemption outweighs the public interest in disclosing the information that under Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting during the consideration of the ensuing reports on the grounds that the report involves the likely disclosure of exempt information as defined in Paragraph 7 of Part 1 of Schedule 12A of the Local Government Act 1972.

16 APPLICATION FOR A ONE YEAR JOINT HACKNEY CARRIAGE / PRIVATE HIRE DRIVERS LICENCE - AMK

Consideration was given to a report of the Corporate Director of Environment, Communities and Leisure, which had been circulated prior to the meeting, regarding an application for a one year joint Hackney Carriage/Private Hire Driver's Licence for AMK.

AMK attended the meeting, along with a friend, and they both addressed the committee.

In making its decision, the Committee found that there were exceptional mitigating circumstances surrounding the offences which allowed for departure from the Council's approved Policy and Guidelines.

RESOLVED:

Approve AMK's application for a one year Joint Hackney Carriage/Private Hire Driver's Licence.

17 CHANGE OF CIRCUMSTANCE OF THE HOLDER OF HACKNEY CARRIAGE / PRIVATE HIRE DRIVERS LICENCE

Councillor Sam Smith joined the meeting.

Consideration was given to a report of the Corporate Director of Environment, Communities and Leisure, which had been circulated in advance of the meeting, regarding a change of circumstances following information received about the holder of a Joint Hackney Carriage/Private Hire Driver's Licence.

SPS attended the meeting with a relative and addressed the Committee.

The Committee heard from one of the Community Protection Officers involved in the incident under discussion and members were shown footage from body worn cameras.

In making the decision the Committee applied the Council's approved Policy and Guidelines.

RESOLVED:

To revoke the Hackney Carriage/Private Hire Driver's Licence held by SPS, giving SPS 21 days to surrender the licence.

SPS was advised of the right of appeal against the decision of the Committee.

The meeting finished at 6.50 pm

Signed by Chair:
Date:

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Report to Environment and Licensing Committee

Subject: Mobile Homes Fit and Proper Policy

Date: 10 August 2021

Author: Food, Health and Housing Manager

Purpose

To advise the Environment and Licensing Committee of recent changes to the legislation relating to mobile home and caravan sites; specifically, the introduction of a fit and proper test and associated fees.

To seek approval of the Fit and Proper Policy found at Appendix A of this report to enable the Policy to be used in accordance with the new legal requirement.

Recommendation(s)

THAT Members :

- 1) Notes the contents of the report and the changes in legislation relating to mobile home and caravan sites**
- 2) Approves the adoption of a Fit and Proper Person Policy 2021**

1 Background

- 1.1 The Mobile Homes Act 2013 (MHA 2013) made significant changes to the local authority site licensing regime, providing local authorities with new enforcement powers. The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 ("the Regulations) come into force in July 2021, and introduce a requirement for 'relevant protected sites', which have residential occupation all year round to be managed by a fit and proper person. It also sets out an overarching framework for the operation of the test, the processes that local authorities will use and a register of fit and proper site managers.

- 1.2 The purpose of the test is to improve the standards of park home site management, by introducing an assessment that the person responsible for managing the site is suitable and of good character. The requirement for the person responsible for managing the site to be a fit and proper person is in addition to the requirement for a site to be licensed.
- 1.3 Once in force, the fit and proper person requirement will make it an offence for a site licence holder to cause or permit land to be operated as a park home site unless they are a fit and proper person to manage the site.
- 1.4 There are two “relevant protected sites” within the Borough. It is a legal requirement for the occupier of each site to have applied and have been entered onto a fit and proper person public register by the end of September 2021. Prior to this date all sites will have been advised of their responsibilities.

2 Proposal

- 2.1 It is proposed that Members approve the adoption of the Fit and Proper Person Policy 2021 found at Appendix A of this report.

3 Alternative Options

- 3.1 Members could choose not to approve the Fit and Proper Person Policy 2021. However this would not be in line with the legislation. The new policy reflects statutory changes brought into effect through The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020. Not to introduce such a policy would be against the requirements of the Regulations.

4 Financial Implications

- 4.1 Additional workload created by these changes to the Policy are to be absorbed into existing Public Protection workloads, no additional staffing or financial resource is required.
- 4.2 The Council can recover the cost of this licensing function in the form of a charge to the customer. These fees are detailed within Appendix 1 of the Policy. The associated fees will be added to the service fees and charges list and reviewed periodically and as required should the costs of providing the service change over time.

5 Legal Implications

- 5.1 The recommendations support the proposed enactment of the Regulations so that the Council may properly apply them.
- 5.2 Applicants will be informed how their information will be used and stored by the Council on the application form in order to comply with the Data protection Principles and obligations on the Council.

6 Equalities Implications

- 6.1 There are no equalities implications arising from this report.

7 Carbon Reduction/Environmental Sustainability Implications

- 7.1 There are no carbon reduction of environmental sustainability implications arising from this report.

8 Appendices

- 8.1 Appendix A – Mobile Homes Fit and Proper Policy 2021

9 Background Papers

- 9.1 MHCLG guidance Mobile Homes Fit and Proper Person Test Guidance – 4th June 2021

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**Gedling Borough Council
Mobile Homes Fit and Proper Person Policy**



Serving People **Improving Lives**

Introduction

1. The Caravan Sites and Control of Development Act 1960 ('the Act') was amended by the Mobile Homes Act 2013. The changes by the 2013 Act came into force on 1st April 2014. In addition, the Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 has permitted local authorities to receive applications from interested parties to determine their fit and proper person status for applicable caravan site licences. These include powers for local authorities to charge fees for licensing functions in respect of "relevant protected sites" which includes residential parks, mobile home parks, Gypsy Roma and Traveller sites.
2. Gedling Borough Council ('the Council') currently has within the Borough two Mobile Home Parks. This Policy sets out the fees which will charge for licensed Mobile Homes Parks, and how they will be calculated.
3. The level of fees and how they are charged are at the discretion of the Council. They are calculated on a 'costs recovery' basis and there will be no profit made by the Council.
4. 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).
5. 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").
6. 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.
7. 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.
8. It is important to highlight that this fee policy will refer to any annual fee to recover costs which the local authority may have incurred, or which will be incurred, in appointing a person to manage a site with the site owner's consent.
9. Site owners will be required to submit a completed application from 1 July until October 2021 (3 months) and pay the fee, outlined below, to their local authority, which will also include any additional fees such as an annual site fee.

Fees for Fit and Proper Persons Register Applications

Initial application fee

10. The initial application fee are set out in Appendix 1.
11. The council 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 fee policy 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) updating files/ computer systems and websites;
 - (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) carrying out any risk assessment process considered necessary and
 - (l) reviews of decisions or in defending appeals.

Additional considerations for an application fee:

12. The council 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 council to decide on whether or not to accept the application. The time taken for these checks is accounted for in the fee, irrespective whether or not the entry on the register is granted.
13. Where an applicant contacts the council before making an application, to ascertain the likelihood of the success of that application, the council 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 on fit and proper person on page 10 of this policy.
14. Any preliminary advice the council provides, prior to receiving an application, must be accounted for in the fee and cannot be charged separately.

Annual fee for an existing entry on the register:

15. The annual fee may also include the cost of monitoring the fit and proper person scheme or conditions attached to entries to the register. The council can conduct this annually and can also decide on frequency of payments.

16. The annual administration fee to maintain the register is set out in appendix 1 and is to be paid on the anniversary of the entry of the register. See paragraph 30 below.
17. The council 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 fee policy for consideration for the annual administration of the maintenance of register and site Licence:
- a) Arrangements and process of payments
 - b) Arrange inspection of premises
 - c) Request documents from site owner eg fire, gas certificates
 - d) Time to review documents and certificates
 - e) Upload documents to computer
 - f) Inspection time
 - g) Travel time by officer
 - h) Preparations of reports
 - i) Preparation of letter
 - j) Upload letter to software
 - k) Queries, complaints
18. Please see table 3 found at page 9 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.

Transfer of License.

19. There may be circumstances in the future where a site license is required to be transferred. The cost of transferring the license is contained in appendix 1

Such other matters as the local authority considers to be relevant

Where no fee is applied

20. In certain circumstances, the council 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

21. This is where the council is provided with the site owner's consent to appoint an individual to manage a site. The costs associated with this shall be reasonable and are recoverable from the site owner.

Revising Fees

22. The Council reviews licence fees annually and publish an updated list of fees and charges should operational costs increase.

23. The items that can be included in calculating the application fee and annual administration fee are set out in the published fee policy at paragraphs 11 and 17.
24. The purpose of publishing the fee policy 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

25. The council 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).
26. There are no requirements for a site owner to make an application for a condition to be altered. Any costs involved with amending existing conditions, or adding new conditions to an entry, shall be factored into the cost of calculating the annual fee.

Site visits – Officer and travel time

27. 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

28. As outlined above in paragraph 7, the council 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.
29. If a local authority decides not to approve an application the applicant is not entitled to a refund of the fee paid.
30. The annual fee shall be set as a condition to any entry being added to the register. The condition shall state the date by which the annual fee payment is due, also stating that failure to make such payment will be a breach of the condition and may lead to legal proceedings being issued.

Fit and Proper Person test

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 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 shall 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. Therefore the local authority 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.

(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 local authority should consider whether relevant management structures are in place and whether they are adequate to ensure effective management of the site. The local authority may want to ensure that the applicant has a robust management plan, this should 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 expected that the site is 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 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 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.

2. The applicant wishing to be included on the register will have to show that there are suitable financial and management arrangements in place for the site and to provide information relating to their conduct in relation to any of the following:

- Offences relating to fraud, dishonesty, violence, arson or drugs or listed in schedule 3 of the Sexual Offences Act 2003.
- Contraventions of law in relation to: housing, caravan sites, mobile homes, public health, planning or environmental health or landlord and tenant law.
- Contraventions of law in relation to the Equality Act 2010, or in connection with the carrying out of any business.
- Harassment of any person in connection with the carrying out of any business.
- Insolvency within the last 10 years.
- Disqualification from acting as a company director within the last 10 years.
- Has the right to work in the UK

In addition to the above, the applicant will also be assessed on their criminal records check

Local authorities have a duty to investigate any conduct which could amount to harassment and any evidence obtained or records of previous harassment complaints will be reviewed and will be taken into consideration in the fit and proper person determination.

3. The conduct of any person associated or formerly associated with the relevant person (whether on a personal, work or other basis).
4. Site owners will 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 they will need to submit applications for fit and proper person assessment separately.
5. The site owner may be asked to provide additional information during the application process relating to current or past associates of the site owner.
6. 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.
7. The local authority may request additional evidence from the applicant which they deem necessary in order to consider the fit and proper person status.

Appendix 1

A	Application fee for inclusion on the mobile home register	£230
B	Annual fee for mobile home licence	£195
C	Transfer fee Licence	£135

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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