

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	FINANCE AND DEMOCRACY COMMITTEE	28 JUNE 2021	6

SETTING THE FEE FOR THE FIT AND PROPER PERSON TEST APPLICATION

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

The Mobile Home Act 2013 has brought into force to require that the manager of a site is a fit and proper person. For this the relevant applicant must submit the required documentation to the Local Authority so that it can be determined that said applicant is a “fit and proper person”. The application must be determined by the Local Authority and requires a commitment in time and administration. The legislation allows for a fee to be charged to cover this extra commitment and this report is to outline the reasonings for setting the fee.

RECOMMENDATIONS

1. That the Committee approves the fee of £250;
2. That the fee, if approved, will be implemented from 01 07 2021;
3. Allow for a review of the fee after the process has been implemented during the forthcoming period.

SUMMARY OF PREVIOUS DECISIONS

There are no previous decisions under this subject matter

CORPORATE PRIORITIES

Economy – To create a vibrant and healthy economy	✓
Environment – To deliver services customers expect	✓
Efficiency – By spending money in the most efficient way	✓
Tourism – To create a great place to live and visit	✓

REPORT

1. On 15 June 2020, the Mobile Homes Act 2013 (Commencement No. 2) (England) Order 2020 (“the Order”) brought into force section 8 of the Mobile Homes Act 2013 (“the Act”). Section 8 of the Act provides that there is requirement for a manager of a site to be a fit and proper person in England.
2. The local authority will consider a set of criteria – the “fit and proper person test” and will either grant an application unconditionally, grant it subject to conditions, or reject it. If a site licence holder or site manager fails

the test, the site licence holder would have to appoint a new manager (who must be a fit and proper person) themselves, or consent to the local authority doing so.

3. Applicants will be included on the register for a period of up to 5 years.
4. A local authority may vary or reject a condition attached to an entry on a register.
5. It will be an offence to breach a condition attached to an entry, provide false or misleading information in support of an application, or to operate a site without having a fit and proper person in place. If convicted of any of these offences, the site owner will be liable for an unlimited fine. Breach of these requirements will also enable the local authority to apply to court to have the site licence revoked.
6. During the first year applications must be submitted between the 1st July 2021 and by midnight of 30 September 2021 inclusive to be assessed as a Fit and proper Person. If a person is found to be operating a site and fails to comply with the fit and proper person test it is a criminal offence and if found guilty would be liable, on summary conviction, of a fine up to level 5 (unlimited).
7. The local authority may charge a reasonable fee cover the administration of the application process and/or any enforcement of the regime.
8. In setting the level of the application fee, local authorities may take into account the following matters on which costs are incurred (by whichever department, including costs incurred by contracting out):
 - (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 for reviewing necessary documents and certificates;
 - (f) review 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
9. When considering the above and in consultation with other local authorities administering the process the initial fee is proposed at £250.
10. The fee shall be reviewed upwards or downwards after the implementation of the application process to take into account any efficiencies or unidentified further work created as a result.
11. A local authority must not make a profit and can only pass on to the site owner their costs incurred in carrying out the fit and proper function. Equally, a local authority is not expected to make a loss in carrying out its fit and proper functions. Overall, the fit and proper test can be a self-financing function which local taxpayers are not required to subsidise.
12. It is recommended as best practice, that each year the local authority assesses their previous costs to determine if they were accurate. Where there is a deficit of expenditure the excess monies need to be reflected in the fee charged to the site owner in the next year.
13. So, for year 2, the fee to the site owner will be the licence fee for year 2 minus the money not spent from year 1.

IMPLICATIONS	
Finance	Currently there are 16 number of sites in the Borough which would see an income in year one of £4000
Legal	The legal implications are set out in the body of the report
Community Safety	There are no direct community safety implications arising from the report
Human Rights and Equalities	There are no direct human rights and equalities implications arising from the report
Sustainability and Environmental Impact	There are no direct sustainability and environmental impact implications arising from the report
Health & Safety and Risk Management	There are no direct sustainability and environmental impact implications arising from the report

LEAD AUTHOR	CONTACT DETAILS	DATE
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BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
None		