

Decision under Delegated Powers

Mobile Homes - A Fit and Proper Person Test for Park Home Sites

Consultation Response

Officer Requesting Decision

Rebecca Short – Private Sector Housing Manager

Officer Making the Decision

Alison Simmons, Head of Strategic and Private Sector Housing

Recommendation

1. That the Council responds to the Ministry of Housing Communities and Local Government (MHCLG) consultation on a fit and proper test for Managers of Park Home Sites as detailed in Appendix A.

Reason

1. To ensure that the Council's views are considered by the MHCLG when developing national policies that may affect the residents of the Borough of Charnwood.

Authority for Decision

Under section 8.2 of the Constitution the Head of Strategic and Private Sector Housing has delegated authority to respond to consultation documents in relation to those Council functions for which she has responsibility, in consultation with the relevant Lead Member.

Decision and Date

Signed:



Dated: 24/10/2019

Head of Strategic and Private Sector Housing

Background

On 22nd July 2019, the Ministry of Housing, Communities and Local Government (MHCLG) opened a consultation on the introduction of a fit and proper person test for Site Licence Holders and managers of relevant protected sites in England.

This consultation closes on the 17th September 2019.

The consultation seeks views on proposals to introduce a fit and proper person test (the test) for those managing park home (mobile home) sites. This follows the Government's commitment to introduce the test, subject to a technical consultation, in its response to the two-part review of park home legislation.

This consultation is intended to ensure that the regulations will support effective operation of the test in practice.

The Head of Strategic and Private Sector Housing has consulted with the Lead Member for Housing on the Council's proposed response as detailed in Appendix A.

Risk Management

No risks have been identified with this decision.

Key Decision:

No

Background Papers:

MHCLG consultation document available at:

<https://www.gov.uk/government/consultations/mobile-homes-a-fit-and-proper-person-test-for-park-home-sites>

consultation response

Mobile Homes – A fit and proper person test for park home sites consultation

This briefing paper considers the Ministry of Housing, Communities and Local Government (MHCLG) consultation paper on the introduction of a fit and proper person test for those managing park home (mobile home) sites published on 22nd July 2019, closing on the 17th September 2019.

Introduction

The Government is consulting on proposals to introduce a fit and proper person test (the test) for those managing park home (mobile home) sites.

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.

The responsibility for managing the site may be that of the Site Licence Holder or a person they appoint to manage the site. Where neither the Site Licence Holder nor their appointed manager is a fit and proper person, no alternative fit and proper manager is appointed by the Site Licence Holder and an appointee cannot be agreed between the Site Licence Holder and the Local Authority, enforcement action could be taken by the Local Authority.

When the fit and proper person requirement is in force, it will be an offence for a Site Licence Holder to cause or permit land to be operated as a park home site unless they:

- a) are a fit and proper person to manage the site; or
- b) appoint a fit and proper person to manage the site; or
- c) have agreed with the Local Authority to the appointment of a suitable person to manage the site.

If the Site Licence Holder operates the site in breach of the fit and proper person requirement, the Local Authority will consider whether to apply to a residential property tribunal for an order revoking the site licence in question and/or to prosecute the Site Licence Holder.

For breaches of the fit and proper person requirement, the proposed regulations will set out new offences and the level of fines to be imposed on conviction.

Through this consultation, the Government is seeking views on:

- What Local Authorities must consider in assessing an application
- The fit and proper person application process
- Local Authority decisions, notifications and appeal rights
- A register of fit and proper persons
- Management Orders
- Sanctions
- The transition period and implementation

1. What Local Authorities must consider in assessing an application

The Government's view

The Government propose that to meet the fit and proper person requirement a Site Licence Holder would need to make an application to the Local Authority to undergo the test in respect of each site in the Local Authority's area for which they hold a licence, for inclusion on the Local Authority's register of fit and proper persons. The Local Authority would apply the test to the application in order to satisfy itself that the person responsible for managing the site was fit and proper.

The Government propose that the Local Authority may be satisfied that the requirement is met if *either* the Site Licence Holder *or* the person appointed by the Site Licence Holder to manage the site undergoes and passes the test, as the person responsible for managing the site.

The Government propose that the mandatory criteria to be considered will include:

- A Site Licence Holder's suitability to manage the site (financial and managerial). This aligns with the requirements Local Authorities must consider when dealing with an application for a transfer of or a new site licence.
- A Site Licence Holder's or Site Manager's conduct. This would include;
 - Professional conduct - in meeting their obligations as a Site Licence Holder /manager of the site and compliance with legislation; and

- Personal conduct – appropriate behaviour, in particular with regards to park home owners.

For Site Managers, Local Authorities will need to consider whether the person has the necessary authority and independence for the effective day to day management of the site. This is so that a Site Manager's ability to take timely decisions and action in carrying out their responsibilities for residents' health and safety can be assessed.

Local Authorities would have a duty to consider all the mandatory criteria to assess whether a person was suitable and of good character when deciding if an applicant is a fit and proper person to manage a site. The Local Authority at its discretion may have regard to any information it considers relevant to assess the fitness of the applicant, ("discretionary criteria"). This may include residents' views in relation to the Site Licence Holder or their manager's conduct or management of the site.

In relation to convictions, the Government propose that a Local Authority may require the applicant to provide a basic Disclosure and Barring Service certificate.

Consultation Question 1

Do you agree that the list of mandatory criteria a Local Authority should consider set out in Annex A are the right ones?

Proposed Council Response

The Council agrees with the proposed mandatory criteria.

2. The fit and proper person application process

The Government's view

Where a company is the Site Licence Holder, an application must be made and signed by the company secretary or an officer of the company.

If the company is to undergo the test as the Site Licence Holder, it would be required to provide details of offences committed by the company. It would be required to provide a list of all the officers and directors of the company and whether any:

- have owned or managed a site or held a site licence for a site in respect of which a Local Authority has applied to the court or tribunal to revoke the licence or has within the previous six months notified the Site Licence Holder of its intention to apply for an order of revocation;
- have been involved with any company that has been wound up and/or been disqualified as a director;

- have been convicted of specified serious criminal offences or convicted of a breach of mobile homes, health and safety or housing legislation in respect of any site or property or breached discrimination law.

In order to provide Local Authorities with the information they need to carry out the test, the Government are proposing that an application for inclusion in a Local Authority's fit and proper register (the register) must include:

- the details of the Site Licence Holder;
- certain convictions; and
- specified details of the site.

It would be a criminal offence (subject to an unlimited fine) for an applicant to withhold information or provide false or misleading information in their application.

Consultation Question 2

Is there any information that the Site Licence Holder should be required to provide in their application to enable Local Authorities to reach their decision in addition to that in Annex B?

Proposed Council Response

In addition to the information contained in Annex B, the application should include evidence of the permanent residential address of the proposed licence holder and/or Site Manager and evidence of the business address of the proposed licence holder/Site Manager (if applicable).

Consultation Question 3

How much do you consider would be an appropriate a) application fee and b) annual fee for a Local Authority to charge?

Proposed Council Response

The Council considers that the following should be included:

- a) the cost of Officer time (with on costs) spent assessing the application in full
- b) the cost of Officer time (with on costs) in administering the register

3. Local Authority decisions, notification and appeal rights

The Government's view

The Government propose that Local Authorities, after considering an application, will be required to make one of three possible decisions listed below and notify the

applicant (and Site Licence Holder where the applicant is the Site Manager) of the decision and when it takes effect.

- a) Notification of decision to include applicant on the register
- b) Notification of decision to include applicant on the register subject to certain conditions (this may include a condition requiring the payment of the annual fee)
- c) Notification of decision not to include person on the register

Where the Local Authority's decision is b) or c), the Government propose that the Local Authority must issue an interim notice within 7 days of making its decision, informing the parties of the reason(s) for their decision.

The notice must also give the applicant 28 days to make any representations to the Local Authority to challenge/seek clarification on the decision and include the end date for the receipt of a submission.

The Local Authority must consider any representations before issuing a notice setting out its final decision to the applicant within 28 days of receipt of the submission.

When the Site Licence Holder receives the Local Authority's decision, they will have two options:

- Accept the Local Authority's decision without appeal
- Appeal to the Tribunal.

Where a Site Licence Holder accepts a decision to be included on the register with conditions, they would confirm their agreement to comply with the conditions, in writing within 28 days of the Local Authority's decision notice. The Local Authority must then add the Site Licence Holder's details and the conditions to the register within 7 working days of receiving their agreement.

If the Site Licence Holder decides to appeal the decision, they must make an application and notify the Local Authority of their application within 28 days of the Local Authority's final decision notice.

The Government propose to create a right of appeal against a Local Authority's decision to:

- Attach conditions to an entry on the fit and proper register;
- Reject an application for an entry on the register;
- Vary conditions for inclusion on the register; or
- Remove a person from the register.

Consultation Question 4

Do you agree the decision making and appeal process, including timescales for notification are reasonable?

Proposed Council Response

The Council agrees that the proposed decision making, appeal process and timescales are reasonable.

4. Register of fit and proper persons

The Government's view

The Government propose that the new regulations would create a requirement for each Local Authority to record the details of fit and proper licence holders and Site Managers on a publicly accessible register. Local Authorities would also be required to keep their registers up to date.

The Government propose that the register would hold details of:

- a) the name and business contact details for the fit and proper person in respect of the management of the site;
- b) the address of the site;
- c) the start and end dates of the period of inclusion on the register;
- d) any conditions/undertakings attached to the applicant's inclusion in the register;
- e) register;
- f) start and end dates of the conditions/undertaking; and
- g) date the conditions are fulfilled extended or varied.

The proposed regulations would prescribe the maximum length of time a person can remain on the fit and proper person register and give Local Authorities discretion to set the length of inclusion on the register. The Government propose that the maximum period of inclusion should be five years from the date of the entry on the register. All licence holders will have to re-apply for the test before the relevant period of inclusion ends.

A Local Authority would be expected to use its discretion to assess the period of inclusion based on the likelihood of changes in circumstances which may have an impact on the fitness of the Site Licence Holder or their appointed Site Manager. The length of inclusion should be proportionate with the maximum five year period being applied unless reasons for concern had been identified. However, it would be able to remove a person from the register or vary an existing condition attached to an entry in the register during the period of inclusion if circumstances changed.

Consultation Question 5

Do you agree with the proposed content of the fit and proper person register?

Proposed Council Response

The Council agrees with the proposed content of the fit and proper person register.

Consultation Question 6

Should Local Authorities make the register available online?

Proposed Council Response

The Council agrees that the register should be made available online as well as at the Council offices.

Consultation Question 7

Do you agree that Local Authorities should have flexibility to set the period for inclusion on the register up to a maximum of 5 years? Should the maximum period be longer?

Proposed Council Response

The Council agrees that the Local Authorities should have flexibility to set the period for inclusion on the register up to a maximum of 5 years. The maximum period should not be longer.

4. Reviewing entries on the register

The Government's view

The Government propose that the regulations allow a Local Authority to review an entry on the register at any time, for example where they are informed of a change in circumstances or new information comes to light that may affect a decision. As a result, a condition may be added, varied or removed in respect of an entry on the register.

It is intended by the Government that Local Authorities would use their judgement in reaching a decision on whether to review an entry and any subsequent action. This may include responding to matters raised by residents.

The proposed regulations will provide that a Local Authority may remove a person from the register if it receives new information regarding the fitness of the person to manage a site and the Local Authority is no longer satisfied that the person is a fit and proper person to manage a site.

A licence holder will need to make a new test application before the end of the period of inclusion.

The Government propose that the Local Authority will consider the same mandatory criteria as for a first application and other relevant information which may include matters relating to the management of the site during the period of inclusion on the register.

Consultation Question 8

Should it be mandatory for Local Authorities to review a person's inclusion on the register of fit and proper people in certain circumstances? What would the circumstances be?

Proposed Council Response

The Council agrees that it should be mandatory for Local Authorities to review a person's inclusion on the register of fit and proper people in circumstances where information comes to light that may impact on the Local Authority's view as to whether than person is a fit and proper person to manage a site.

Consultation Question 9

Do you agree that in order to remain on the register an applicant should undergo the same test as for the first application? If no, what should the test include?

Proposed Council Response

An applicant should undergo the same test as for the first application in order to remain on the register.

5. Management Orders

The Government's view

In order to avoid the closure of a park home site and thereby protect the tenure of park home residents, the Government consider that provision should be made to give Local Authorities powers to apply to the tribunal to install an interim Site Manager to take over management of a site where a site licence has to be revoked or because a fit and proper person cannot be found.

A Management Order would be intended to secure the long term and effective management of a site where, in the foreseeable future, a suitable fit and proper person cannot be appointed to manage the site, or a licence cannot be granted.

They would enable the interim Site Manager to receive pitch fees and pay for the cost of essential works. Provisions could also be introduced that ensure that key services and utilities will continue to be available to park home residents.

However, as Management Orders are outside the scope of powers provided under Section 8 of the Mobile Homes Act 2013, implementation of such a provision would require primary legislation, when parliamentary time allows.

Consultation Question 10

Do you agree that making management orders available to Local Authorities should be considered to help protect residents in the extreme circumstances when a licence needs to be revoked or a fit and proper person cannot be found?

Proposed Council Response

The Council agrees.

6. Sanctions

The Government's view

The Government propose to create the following summary offences, for which a person convicted would face an unlimited fine (level 5).

a) Operating a site in contravention of the fit and proper person regulations

(Where the Site Licence Holder has been convicted twice for this offence, the Local Authority may apply to the magistrates for an order to revoke the site licence).

b) Providing false or misleading information or failing to provide information in an application for inclusion of the register of fit and proper Site Managers

c) Failing to comply with a requirement set as a condition of the Local Authority's decision to;

- include a person on the register of fit and proper persons to manage a site, or
- continue to include a person on the register of fit and proper persons to manage a site.

(This would cover a failure to meet a requirement set as part of the assessment/decision process for inclusion on the register and where a

requirement has been set or varied after a Site Manager is on the register, as a condition of continuing inclusion).

The Government propose that the Site Licence Holder will have a defence to the above offences where:

- an application for a test has been made and not yet determined (including where any grace period granted has not yet expired); or
- where any subsequent appeal process is continuing.

Where a Site Manager resigns, or their contract is terminated unexpectedly leaving the site without a fit and proper person in place, the Government propose the Site Licence Holder will have a defence to the offences at a) and c) provided that they:

- inform the Local Authority within 5 working days that the Site Manager has left; and
- make a new application for a test within 28 days of the date that the fit and proper person Site Manager stopped managing the site.

Consultation Question 11

Are any additional sanctions needed to provide Local Authorities with effective tools to enforce the fit and proper person requirements?

Proposed Council Response

There are no additional sanctions required.

7. Transition Period and Implementation

The Government's view

To allow Local Authorities time to prepare for the changes the Government propose to bring the requirement for the licence holder or an appointed Site Manager to be a fit and proper person into force no less than six months after the regulations are made ("the implementation date").

During this transition period Site Licence Holders will need to make an application before the implementation date.

In the six month transition period Local Authorities will need to:

- i. Contact all existing operating sites – and new sites applying for a licence – advising them of the new requirement and what information they will need to supply in order for their site to continue operating
- ii. Provide an opportunity for applications to be received from existing operating sites and new sites applying for a licence

The Government propose that Local Authorities would issue decision and interim notices in respect of all applications received during the transition period within 3 months of the implementation date. This is to allow for sufficient time for processing if there is an influx of applications close to the implementation date deadline.

Consultation Question 12

Do you agree that six months is long enough for Site Licence Holders to submit applications for inclusion on the fit and proper person register

Proposed Council Response

The Council agrees.

Consultation Question 13

How many relevant protected sites do you have in your area?

Proposed Council Response

The Council has 12 relevant protected sites across the Borough.

Consultation Question 14

Local Authorities only – Do you agree that decision and interim notices can be issued to all applicants who apply during the transition period within three months of the implementation date?

Proposed Council Response

The Council disagrees and proposes a six month period to ensure that a thorough procedure for the new assessments can be developed, tested and implemented.

Consultation Question 15

Do you have any other comments on the proposals for the fit and proper person test for park homes sites?

Proposed Council Response

The Council has no further comments.

Annex A: Proposed criteria Local Authorities must consider

The purpose of the fit and proper person 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 mandatory criteria provides the evidence for the test. Local authorities may include their own discretionary criteria in the test to take account of additional evidence which is relevant to an assessment.

1. Matters local authorities must take into consideration where applicant is the site Licence Holder (A and B align with the requirements when deciding whether to grant or approve a transfer of a licence).

A) The suitability of the site Licence Holder to manage the site under the terms and conditions of the licence.

The Local Authority must take into account whether or not:

- The applicant has a sufficient interest or estate in the site;
- The funding arrangements in place for managing the site and complying with the licence are appropriate;
- The structure for the management of the site is appropriate;
- The Licence Holder has the ability to comply with licence conditions and to provide for the long-term maintenance of the site.

B) The Conduct of the Licence Holder.

The Local Authority must take into account whether the site Licence Holder:

- has been convicted for failing to comply with a compliance notice relating to the site
- has been or is being investigated in relation to the offence of failing to comply with a compliance notice in relation to the site or is in the process of being prosecuted for such an offence
- has failed to pay money owed to the Local Authority (annual licence fees, demands for enforcement)

C) Other considerations

The Local Authority must take account of:

- all the factors in A) and B) in relation to any other sites the site Licence Holder is or has been involved in.
- whether the applicant has owned, managed or held the licence of a site where a Local Authority has applied to a court or a tribunal to revoke the licence or has

within the previous six months notified the site owner of its intention to apply for an order of revocation.

2. Where the application relates to a person appointed to manage the site, the Local Authority must consider whether:

- a. the proposed structure for the management of the site supports and does not obstruct the applicant in discharging the obligations of the licence-holder.
- b. the applicant has owned, managed or held the licence of a site where a Local Authority has applied to a court or a tribunal to revoke the licence or has within the previous six months notified the site owner of its intention to apply for an order of revocation.

3. Other criteria the Local Authority must consider in relation to a site Licence Holder or a person appointed to manage the site:

- Convictions for fraud, theft, violence and sexual offences
- Breach of the law in relation to discrimination in the course of business
- Contravention of housing, park home or consumer, public health, planning and environmental health law
- Right to work in the country
- Whether the applicant has been insolvent or has held a position connected to financial responsibility or responsibility in a company or organisation that has been insolvent
- Association with persons who have committed offences within the test criteria.
- Failure of the test in another Local Authority
- Membership of a redress scheme or other body

Discretionary criteria local authorities may choose to consider:

In addition to the mandatory criteria, local authorities may take account of any information they consider relevant to an assessment of the suitability and good character of a site Licence Holder or their appointed manager as a fit and proper person. For example, this may include data that the Local Authority holds and information received from park home residents.

Annex B: Content of the fit and proper person check

A. The name, address, telephone number and e-mail address of:

- the applicant and the person appointed to manage the site (if any);
- any other person or company (including a holding company) who has an interest in the site; and

B. The name and address of the site for which the application is being made and the type of relevant protected site for which the application is being made (residential or mixed use);

C. The total number of pitches broken down by type (owner occupied, holiday use, rented for residential use, vacant pitch or caravan);

D. Details of the suitability of the site Licence Holder to manage the site under the terms and conditions of the licence: sufficient interest or estate in the site; appropriate funding arrangements; structure for the management of the site; ability to comply with licence conditions and to provide for the long-term maintenance of the site.

E. Details of the other relevant protected sites that:

- the applicant owns/has an interest in or holds the site licence for
- the Site Manager is the manager of, whether in the area of the local housing authority to which the application is made or in the area of any other local housing authority;

F. Details of (as may apply to an individual or company);

i. any unspent convictions that may be relevant to the applicant's fitness to manage the site and in particular any such convictions in respect of any offence involving fraud, violence, arson, sex offences, deception, other dishonesty or drugs;

ii. findings by a court or tribunal that the applicant has unlawfully discriminated against any person on grounds of sex, colour, race, ethnic or national origins, disability or sexuality in, or in connection with, carrying out any business activities;

iii. whether the applicant or Site Manager has been disqualified as a company director;

iv. any information requested by the Local Authority to assess whether a person is of good character

G. Whether the applicant or appointed Site Manager has;

i. been convicted of an offence under section 3 of the Caravan Sites Act 1968;

- ii. been determined by a court or tribunal to have harassed any person in connection with any business activity;
- iii. failed to comply with any obligation or requirement under the Mobile Homes Act 1983;
- iv. failed to comply with any requirement imposed upon him under any Health and Safety or Fire Safety legislation;
- v. failed to comply with any obligation or requirement imposed on him under the 1960 Act (as amended);
- vi. contravened any enactment relating to housing, public health, planning, environmental health which led to civil or criminal proceedings resulting in a judgment being made against them;
- vii. owns or has managed any other site which has been subject of any enforcement action under the 1960 Act or any other enactment;
- viii. owns or has managed any other site where the Local Authority has refused a licence;

