

# Public Document Pack

**Bill Cullen** MBA (ISM), BA(Hons) MRTPI  
**Chief Executive**

Date: 21 September 2021



**Hinckley & Bosworth  
Borough Council**

**To: Members of the Executive**

Cllr SL Bray (Chairman)  
Cllr DC Bill MBE (Vice-Chairman)  
Cllr MB Cartwright  
Cllr WJ Crooks

Cllr KWP Lynch  
Cllr MT Mullaney  
Cllr K Nichols

Copy to all other Members of the Council

(other recipients for information)

Dear Councillor,

There will be a meeting of the **EXECUTIVE** in the De Montfort Suite, Hinckley Hub on **WEDNESDAY, 29 SEPTEMBER 2021 at 6.30 pm** and your attendance is required.

The agenda for the meeting is set out overleaf.

Yours sincerely

Rebecca Owen  
Democratic Services Manager

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- *There are two escape routes from the Council Chamber – at the side and rear. Leave via the door closest to you.*
- Proceed to **Willowbank Road car park**, accessed from Rugby Road then Willowbank Road.
- **Do not** use the lifts.
- **Do not** stop to collect belongings.

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Thank you

## EXECUTIVE - 29 SEPTEMBER 2021

### A G E N D A

1. APOLOGIES

2. MINUTES (Pages 1 - 2)

To confirm the minutes of the meeting held on 11 August 2021.

3. ADDITIONAL URGENT BUSINESS BY REASON OF SPECIAL CIRCUMSTANCES

To be advised of any additional items of business which the Chairman decides by reason of special circumstances shall be taken as matters of urgency at this meeting.

4. DECLARATIONS OF INTEREST

To receive verbally from Members any disclosures which they are required to make in accordance with the Council's code of conduct or in pursuance of Section 106 of the Local Government Finance Act 1992. **This is in addition to the need for such disclosure to be also given when the relevant matter is reached on the agenda.**

5. QUESTIONS

To hear any questions in accordance with Council Procedure Rule 12.

6. ISSUES ARISING FROM OVERVIEW & SCRUTINY

(If any)

7. CARAVAN SITES - FIT AND PROPER PERSON TEST (Pages 3 - 26)

To seek approval of a determination and fee policy in relation to the fit and proper person test.

8. ANY OTHER ITEMS OF BUSINESS WHICH THE CHAIRMAN DECIDES HAVE TO BE DEALT WITH AS MATTERS OF URGENCY

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## HINCKLEY AND BOSWORTH BOROUGH COUNCIL

### EXECUTIVE

11 AUGUST 2021 AT 6.30 PM

PRESENT: Cllr SL Bray - Chairman

Cllr MB Cartwright, Cllr WJ Crooks, Cllr KWP Lynch, Cllr MT Mullaney and Cllr K Nichols

Officers in attendance: Matthew Bowers, Bill Cullen, Paul Grundy and Rebecca Owen

97 APOLOGIES

Apologies for absence were submitted on behalf of Councillor Bill.

98 MINUTES

It was moved by Councillor Cartwright, seconded by Councillor Nichols and

RESOLVED – the minutes of the meeting held on 13 January be approved as a correct record.

99 DECLARATIONS OF INTEREST

No interests were declared at this stage.

100 MATTER FROM WHICH THE PUBLIC MAY BE EXCLUDED

On the motion of Councillor Bray seconded by Councillor Crooks, it was

RESOLVED – in accordance with section 100A(4) of the Local Government Act 1972, the public be excluded from the following item of business on the grounds that it involves the disclosure of exempt information as defined in paragraphs 3, 6(b) and 10 of Part I of Schedule 12A of that Act.

101 A STRATEGY (INCLUDING ENFORCEMENT) FOR BRADGATE STABLES

Members received a report on the condition of Bradgate Stables which sought agreement of a strategy to address the issues. It was moved by Councillor Cartwright, seconded by Councillor Bray and

RESOLVED – the recommendations contained within the report be approved.

(The Meeting closed at 6.33 pm)

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CHAIRMAN

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## Hinckley & Bosworth Borough Council

Forward timetable of consultation and decision making

Executive                      29 September 2021

Wards affected:            All wards

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### **MOBILE HOMES ACT 2013 – FIT AND PROPER PERSON TEST**

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Report of Director Environment & Planning

#### **1. Purpose of report**

- 1.1 To Inform Executive of the introduction of a new fit and proper person test for certain caravan site licence holders and to seek approval of a determination and fee policy for the test.

#### **2. Recommendation**

- 2.1 That Executive approves the determination and fee policy contained in appendix 1 and 2 to this report.

#### **3. Background to the report**

- 3.1 The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 (“the Regulations”), require the manager of certain licensed caravan sites to be a Fit and Proper Person. HBBC is accordingly required to introduce a fit and proper person test for certain mobile home site owners, or the person appointed to manage the site, unless they are eligible for an exemption under the Regulations.
- 3.2 The Regulations allow the Council to receive applications from existing site owners, or the person appointed to manage the site, from 1 July 2021 up to and including 30 September 2021. There is a continued requirement for those that are submitting an application for a caravan site licence under the Caravan Site (Control of Development Act) 1968 to also submit an application for a fit and proper person test if the site is a “relevant protected site” (see below).

- 3.3 The Council 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.*”
- 3.4 The fit and proper person test applies to operators of a “relevant protected site” only. 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. Owner occupiers and family owned sites are exempted from the definition, whether they live on site all the year round or not. The Fit and Proper Person Test does not apply to any traveller sites within the Borough.

Within the borough the following are “relevant protected sites”:

Springfield Park – Hinckley  
 Conifers – Ratby  
 Queen Street – Markfield  
 Croftersvale – Barlestone

- 3.5 The results of applications are placed on a public register and successful applications are usually renewed every 5 years. Applications can also be refused or granted subject to condition. Decisions made can be appealed to the First Tier Tribunal.
- 3.5 See Appendix 1 for the Determination Policy and Appendix 2 for the Fee Policy.
- 3.6 Hinckley and Bosworth Borough Council are members of a Caravan Site Licensing Forum made up of Local Authorities from across the Country. A barrister was appointed on behalf of the forum to draw up a draft determination and fee policy based on the regulation requirements for Local Authorities to formulate into their own policies. This approach is intended to promote consistency of approach and enforcement across the country and both the Determination Policy and Fee Policy contained in the appendices to this report follow these drafts. Similarly, benchmarking has occurred across the County to again ensure consistency.
- 3.7 The Fee Policy details the application fee of £125.51 which has been calculated based on the amount of time that it is likely to take to process the application; as is required by the regulations.

#### **4. Exemptions in accordance with the Access to Information procedure rules**

- 4.1 Open



## **5. Financial implications (AG)**

- 5.1 There are currently four such licences. If new fees policy is approved then these four licences will generate an additional income of £500 (4 applications at £125) on a five year renewal cycle starting in 2021/22.

## **6. Legal implications (MR)**

- 6.1 Set out in the report.

## **7. Corporate Plan implications**

- 7.1 Support vulnerable people and those who are most in need.  
Take measures to reduce crime and antisocial behaviour and protect people from harm.  
Keep our borough clean and green.  
Make our neighbourhoods safer.  
Support our rural communities.

## **8. Consultation**

- 8.1 None

## **9. Risk implications**

- 9.1 It is the council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.
- 9.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.
- 9.3 The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
Failure to have a determination and fee policy in place by 1.10.2021 which could lead to a finding of maladministration.	Approval of the appended determination and fee policy.	Simon Smith

## **10. Knowing your community – equality and rural implications**

- 10.1 The requirements of the fit and proper persons test is applicable to certain caravan site licence holders across the whole borough.

## **11. Climate implications**

- 11.1 It is not considered that there will be climate implications in making this decision.

## **12. Corporate implications**

- 12.1 By submitting this report, the report author has taken the following into account:

- Community safety implications
- Environmental implications
- ICT implications
- Asset management implications
- Procurement implications
- Human resources implications
- Planning implications
- Data protection implications
- Voluntary sector

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Background papers:     None

Contact officer:         Simon Smith – Senior Environmental Health Officer - 5769  
Executive member:     Councillor MB Cartwright

## APPENDIX 1

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### HINCKLEY AND BOSWORTH BOROUGH COUNCIL MOBILE HOMES ACT 2013 FIT AND PROPER PERSON - DETERMINATION POLICY

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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”). Hinckley and Bosworth Borough Council (HBBC) is accordingly required to introduce a fit and proper person test for existing mobile home site owners, or the person appointed to manage the site, unless they are eligible for an exemption under the Regulations.

The Regulations, made on 23 September 2020, allow HBBC to receive applications from existing site owners, or the person appointed to manage the site, from 1 July 2021 up to and including 30 September 2021. There is a continued requirement for those that are submitting an application for a caravan site licence under the Caravan Site (Control of Development Act) 1968 to also submit an application for a fit and proper person test if the site is a “relevant protected site” (see below).

HBBC 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, HBBC 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. Owner occupiers and family owned sites are exempted from the definition, whether they live on site all the year round or not. 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, HBBC must 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. It follows that, HBBC 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.

*The management structure and funding arrangements for the site*

HBBC should consider whether relevant management structures are in place and whether they are adequate to ensure effective management of the site. HBBC 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.

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 be complex issues as a result of this, such as needing the court's permission to serve a claim in a foreign country. Should this happen, legal advice would be sought. 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*

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

2. **Personal information relating to the applicant concerned.** This would include a criminal record check and should include evidence 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) has the right to work in the United Kingdom and,
- (h) 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).

HBBC has 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. HBBC may also rely on convictions by the courts as evidence of harassing behaviour which would reduce the risk of HBBC being successfully challenged on any refusal to approve an applicant on this basis.

HBBC 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. HBBC may also address any underlying issues by attaching conditions to the individual's entry on the register.

3. Upon rejection of a person's application by any other local authority this should be centrally recorded and include the details of the person involved and the reasons for the rejection.

### **Items to take into consideration**

4. "The applicant" is defined at paragraph 2 of the Regulations as "the person who makes an application under regulation 6".
5. The "relevant person" is also defined at paragraph 2 of the Regulations to mean "the subject of the fit and proper person assessment under Regulation 7".
6. The conduct of any person associated or formerly associated with the relevant person (whether on a personal, work or other basis) is also an important factor to be considered in the fit and proper person assessment.

7. Site owners may 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 that information would have already needed to have been provided in their own application forms.
8. It is not routinely required to provide information of all current or past associates of the site owner. However, it is advisable that, prior to making any final decisions, HBBC considers the conduct of past and current associates relevant to that individual's application. The site owner can be asked to provide additional information during the application process.
9. HBBC will be required to establish whether an individual is considered to be an associate of the relevant person and then whether their conduct is relevant to the application. 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.
10. The Regulations are drafted widely giving the opportunity for HBBC to take into consideration other relevant matters. However, HBBC 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.
11. HBBC are able to decide the specific matters they deem relevant to the fit and proper person application. These matters could be in relation to current or previous issues, or events, that have occurred in relation to the park site or any other park site owned or managed by the site owner or site manager in another local authority area. Additionally, the site owner's conduct regarding other business, outside of the park homes sector, can also have implications on the financial and management arrangements of the site in question. Any matters which HBBC believe to be of relevance to the application should primarily focus on the relevant person's conduct, competence and their suitability to manage the site.
12. Evidence will be obtained by HBBC to support any additional matters that it requires to be taken into consideration for the application. This is to mitigate any risks if challenged at a tribunal because of final decision. The evidence could include previous tribunal and court decisions, documents or records from Companies House, or other public bodies or financial institutions.

## **Applications**

The Regulations use various terms in the application process and these are outlined below:

**As mentioned earlier "Relevant person" is defined in paragraph 2 of the Regulations and is** "the subject of the fit and proper person assessment under Regulation 7". Please note that this could be the site owner or person appointed to manage the site by the site owner.

**“Relevant officer”** is defined in paragraph 1 of Schedule 2 of the Regulations, where the applicant is a company, a relevant officer will be a director or other officer of the company; or, where the applicant is a partnership, a partner; or, where the applicant is a body corporate, a member of the management committee of that body.

**“Required Information”** is defined in paragraph 14 of Schedule 2 of the Regulations as: the person’s name and business contact details; details of the person’s role or proposed role in relation to the management of the site; where the person has not yet been appointed, the address, telephone number and email address (if any) at which the person may be contacted in respect of the application; details of each relevant protected site (other than that to which the registration application relates) — for which the person holds a licence issued under section 3 of the Caravan Sites and Control of Development Act 1960, or in which the person has a legal estate or equitable interest, or which the person manages.

The application for inclusion in the fit and proper register, must therefore include the following:

The applicant and site details required

13. Details of the site and the applicant:

- (1) The applicant’s name and business contact details.
- (2) Where the applicant is not an individual, the following information in relation to the individual completing the application on behalf of the applicant and each relevant officer:
  - (i) the person’s name;
  - (ii) details of the person’s role (if any) in relation to the management of the site.
- (3) The name and address of the site.
- (4) Evidence of the applicant’s legal estate or equitable interest in the site.
- (5) Confirmation that the applicant is the occupier within the meaning of section 1 of the Caravan Sites and Control of Development Act 1960.
- (6) The name and business contact details of any other person that has a legal estate or equitable interest in the site.

14. The name and address of each other relevant protected sites:

- (1) for which the applicant holds a licence issued under section 3 of the Caravan Sites and Control of Development Act 1960;
- (2) in which the applicant has a legal estate or equitable interest; or
- (3) that the applicant manages.

15. 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.

Information relating to the site manager

16. In circumstances where a “site manager” has been appointed to manage a site, more information is needed. The person who is applying for the site manager to be registered as a fit and proper person (the relevant person) must provide the following information: the site manager’s name and details of that person’s role (if any) in relation to the management of the site.

If the site manager has appointed or intends to appoint a further individual (“A”), ‘Required Information’ would also be needed from A. And where A is not a relevant officer of the site manager, the relevant officer to whom A is accountable for the day-to-day management of the site, should be the one to provide the Required Information.

Additional information when the applicant is the relevant person and an individual

17. When the applicant is the relevant person, and is an individual, and the applicant has appointed, or intends to appoint, someone else (“B”) to be responsible for the day-to-day management of the site, ‘Required Information’ would be needed from B. If B is not an individual but is, instead, for example, a company, and B has appointed an individual (“C”) to do the day-to-day management, ‘Required Information’ would be needed from C. Where C is not a Relevant officer of a company, the relevant officer to whom C is accountable for the day-to-day management of the site would also need to provide the Required information.

Additional information where applicant is relevant person and not an individual

18. When the applicant is the relevant person but is not an individual and the applicant has appointed or intends to appoint someone else (“B”) to be responsible for the day-to-day management of the site, ‘Required Information’ would be needed from this person. If B is not a Relevant officer of the applicant the person to whom B is accountable for the day-to-day management of the site (“C”) would also need to provide the Required Information. Where B itself is not an individual, the individual (“D”) that B has appointed or intends to appoint to be responsible for the day-to-day management of the site would also need to provide the ‘Required Information’. Where D is not a Relevant officer of B, the relevant Officer to whom D is accountable for the day-to-day management of the site would also need to provide the Required Information.

19. It can be seen from the above that the Regulations prohibit the operation of a relevant protected site unless the site owner or its site manager (whatever the management structure might be) has been assessed by HBBC as a fit and proper person to do so. This has been included to ensure that consistent standards are applied to companies and other organisations that are not individuals.

**Criminal record certificate/s**

20. 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.



21. With reference to the above law, the Criminal record required is basic only (not enhanced).
22. 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.

### **Declaration**

23. A declaration made and signed by the “appropriate person”, which means:
  - (a) where the applicant is a company, a director or other officer of the company;
  - (b) where the applicant is a partnership, one of the partners;
  - (c) where the applicant is a body corporate and the conduct of the management of the body is vested in its members, a member;
  - (d) where the applicant is not a body falling within (a) to (c) above, a member of the management committee;
  - (e) where the applicant is an individual, that individual.
24. Where the applicant is not the relevant person, the declaration must confirm that the applicant has made all reasonable enquires into the matters mentioned in paragraph 9 of the Regulations and considerations relevant to the fit and proper person assessment as set out below.
25. The declaration should also state that the information provided in the application is correct and complete to the best of the applicant’s knowledge and belief.

### **Considerations relevant to fit and proper person assessment**

26. Proper management of the site includes, but is not limited to, securing compliance with the site licence and the long term maintenance of the site.
27. To be able to secure the proper management of the site, HBBC must (amongst other things) have regard to whether the relevant person has a sufficient level of competence to manage the site and the management structure or proposed management structure and funding arrangements.

### **Decisions, notification and rights of appeal**

28. HBBC must make a decision on the application in a timely and practicable manner and either:
  - (a) where the decision is to grant the application unconditionally and 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.
29. On receipt of an application HBBC may:
  - (a) grant the application unconditionally;
  - (b) grant the application subject to conditions; or
  - (c) reject the application.

## Granting the application unconditionally

30. Where HBBC is satisfied that the applicant meets the fit and proper person test unconditionally, they must include the applicant on the register for 5 years. HBBC must issue a final decision notice to the applicant to inform them of its decision.
31. The final decision notice must clearly state:
- (a) the date the final decision notice is served;
  - (b) the final decision;
  - (c) the reasons for the decision;
  - (d) when the decision is to take effect;
  - (e) information about:
    - (i) the right of appeal to the First Tier Tribunal; and
    - (ii) the period within which an appeal may be made.

## To include the applicant on the register subject to certain condition(s)

32. In some circumstances, HBBC can specify that the individual for the fit and proper person test will only be successful if certain conditions are met. If these conditions are satisfied, HBBC can grant an application subject to those condition(s). HBBC can also grant an application for less than 5 years.
33. It may be the case that HBBC decides to include the person on a register subject to condition(s), if it would only be satisfied that the person would meet the fit and proper requirement if the condition(s) were complied with. An applicant will be able to appeal against the decision to attach (or vary) any condition to an entry on the register. It is therefore imperative that HBBC has clear and justifiable reasons for attaching any condition(s) and that any conditions imposed can be enforced.
34. Conditions will need to be clearly stated for the applicant's understanding and this will also allow for HBBC to ensure that they are enforceable.

An example of the requirements are included in the Table 1 below.

Table 1

Specific	<b>The specific condition/s a site owner is being requested to address.</b>
<b>Measurable</b>	The conditions required and the outcome(s) expected.
<b>Achievable</b>	The applicant should be reasonably expected to be able to achieve the condition. For example, it may not be reasonable to expect a site owner of one small site to have the same resources to introduce the same procedures as a medium sized company.
<b>Realistic</b>	The applicant should have a clear understanding of how the required outcome can be reached and that there are no circumstances or factors which would make the achievement of the outcome impossible or unlikely.
<b>Timebound</b>	A clear timescale in which the task/action must be completed.

35. The fit and proper person test is aimed at ensuring that the person managing the site is competent and the conditions should relate directly to the person's ability to secure the proper management of the site.
36. Where a person has contravened legislation, or committed offences set out in paragraph 2 above, it is not recommended that conditions are set in relation to those matters. This is because such a condition would be unlikely to meet the tests set out above in paragraph 33. For example, if a person has committed fraud or violence, that specific incident cannot be reversed by requiring the person to perform a specific task.
37. Where the person has committed those listed offences or contravened legislation, these breaches should be considered, together with all the other information available, when reaching a preliminary decision.
38. Conditions can relate to any factors which are relevant to the person's competence to manage the site, the management structure, or funding arrangements for the site, an associated person's influence, and any other relevant factors.
39. **Example 1** - HBBC has evidence of a site owner's failure over a certain period of time to address residents' complaints. This is an example of poor management which could be resolved by the site owner implementing an adequate complaints procedure. A condition could be attached requiring the site owner to *"implement an effective and accessible three stage complaints process for residents by xx date and provide the LA with quarterly reports of complaints and outcomes, from that date and for the first year"*.

If the condition is met within the specified time frame, HBBC can record this in the register. If, at a future date, it is found that the site owner failed to implement a complaints procedure, a further opportunity to comply may be given and this could include a new condition of the site owner providing quarterly reports of complaints and outcomes for each year. The site owner could also be expected to complete a relevant "Customer service/Dealing with complaints" course by a certain period. However, should HBBC consider the actions as unlikely to achieve the desired outcome, the site owner could be removed from the register.

40. **Example 2** – If, when considering an application, certain documents or information are unavailable to the applicant, because of delays from third parties, HBBC may wish to attach a condition to the entry on the register that the site owner "is to provide HBBC by registered post, with the original xx document by xx date".
41. **Example 3** - An associated person has been visiting the park and, through their action 'X', has caused distress to the residents impacting their well-being and security. A condition could be attached to the register requiring the site owner to put measure(s) in place by xxx date preventing the associated person, or any other person, from carrying out action X on the site.

#### **Decisions not to include the applicant on the register**

42. Should HBBC determine that the applicant does not meet the requirements, and attaching conditions would not be appropriate, HBBC can refuse to grant the application.
43. Where HBBC makes a decision to include the applicant on the register, subject to conditions, or not to include the applicant on the register, a preliminary decision notice to the applicant must be issued.
44. The preliminary decision notice must clearly state:
- (a) the date the preliminary decision notice is served;
  - (b) the preliminary decision;
  - (c) the reasons for it;
  - (d) the date it is proposed that the final decision will have effect;
  - (e) information about the right to make written representations
  - (f) where the preliminary decision is to refuse the application, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the regulations; and
  - (g) where the preliminary decision is to grant the application subject to conditions, the consequences of failing to comply with any conditions.

### **Right to make a representation**

45. An applicant who receives a preliminary decision notice will have 28 days in which to make representations to HBBC. The 28-day period begins with the day after the day on which the notice was served.
46. HBBC is obliged to consider and take any representations it receives into account before making a final decision.

### **Final decision notice**

47. HBBC must, 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.
48. The final decision notice must set out:
- (a) the date the final decision notice is served;
  - (b) the final decision;
  - (c) the reasons for it;
  - (d) when the decision is to take effect;
  - (e) information about the right of appeal and the period within which an appeal may be made;
  - (f) where the decision is to refuse the application, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the regulations; and
  - (g) where the decision is to grant the application subject to conditions, the consequences of failing to comply with any condition.

## **Appeals**

49. 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 HBBC. These could include:

- (a) including the relevant person on the register for an effective period of less than 5 years;
- (b) including the relevant person on the register subject to conditions; and
- (c) rejecting the application.

50. Where an applicant accepts HBBC’s decision not to include the person originally stated in the application on the register, they 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.

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

## **Withdrawal or amendment of notice**

52. There may be circumstances where HBBC 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.

53. To withdraw or amend a notice, HBBC must serve notice to the person on whom the original notice was served.

54. There are no requirements for notices to contain specific information, however, a withdrawal or amendment notice should state:

- (a) That it is withdrawing/amending the original notice (a copy of the original notice should 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.

## **Removal from the register**

55. If, after a person is included in the register, and new evidence relevant to the person’s inclusion becomes available, HBBC 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.

56. HBBC 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 HBBC decides to take any of the actions listed in paragraph 51 (a) to (c) above, HBBC must serve a notice of any proposed action on the occupier.

57. The notice of proposed action must clearly state:

- (a) the date the notice of proposed action is served;
- (b) the action HBBC proposes to take;
- (c) the reasons for it;
- (d) the date it is proposed that HBBC will take the action;
- (e) information about the right to make written representations;
- (f) where the proposed action requires the removal of a person from the register, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the regulations; and
- (g) where the proposed action is to impose a condition on the inclusion of a person in the register or to vary a condition, the consequences of failing to comply with said conditions.

58. A notice of proposed action is not required if HBBC decides to remove a condition attached to an entry. A removal of a condition is viewed widely as being a positive step, which is unlikely to be opposed. It is for that reason that a notice of proposed action is not required. As good practice though, HBBC will make the site owner or their manager aware of the decision in writing and also ensure the register is updated.

### **Notice of action taken**

59. 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.

60. HBBC must, as soon as reasonably practicable after the end of the 28-day period, decide whether to carry out the proposed action.

61. Where HBBC decides to take the action, HBBC must serve a further notice on the occupier, indicating the action that has been taken, within the period of 5 working days beginning with the day after the day on which the action was taken.

62. The notice of action must set out—

- (a) the date the notice of action is served;
- (b) the fact that they have taken the action;
- (c) the reasons for doing so;
- (d) the date the action was taken;

- (e) information about the right of appeal and the period within which an appeal may be made;
- (f) where the action is to remove a person from the register, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of regulations; and
- (g) where the action is to impose a condition on the inclusion of a person in the register or to vary a condition, the consequences of failing to comply with any condition.

## Offences

63. There are 3 offences which can occur within the Regulations. They are as follows:

- Operating a site in contravention of the fit and proper person regulations - The site owner will have certain defences under the Regulations in any proceedings brought against them.
- Withholding information or including false or misleading information in the registration application - The site owner will not have any defences under the Regulations in any proceedings brought against them for this offence.
- Failing to comply with a specified condition - The site owner will have certain defences under the Regulations in any proceedings brought against them.

64. HBBC is responsible for enforcing the regulations. A site owner found guilty of any of the above offences will be liable on summary conviction to a level 5 (unlimited) fine.

## Defences

65. One defence is available to a site owner who has inherited a site and would be found to have a reasonable excuse for failing to make an application within the relevant periods as set out below.

### Relevant periods in specific circumstances

66. The below table outlines limited circumstances where a site owner may have a defence.

Row	Circumstance	Relevant period for making an application in the circumstance
1	the occupier held a site licence immediately before the day on which regulation 4 (operating a site without being a fit and proper person) came into force on 1 October 2021.	From 1 <sup>st</sup> July 2021 before 1 October 2021, the day on which regulation 4 came into force
2	the period of a person's inclusion in the register in relation to the site has come to an end other than as a result of action by the local authority	not less than two months before the end of the period of the person's inclusion in the register

	under regulation 8(1)(a)( removal from the fit and proper register after new relevant evidence becomes available).	
3	at the time that the occupier became entitled to within the period of 3 months possession of the land it was in use as a relevant protected site; and within the period of 28 days beginning with the day after the day on which the person became the occupier of the land the occupier notifies the relevant local authority of its intention to make an application under regulation 6 (application for inclusion in the register)	beginning with the day after the day on which the person became the occupier of the land
4	at the time that the occupier became entitled to possession of the land it was in use as a relevant protected site; and the occupier does not give the notification referred to in row 3 above	within the period of 28 days beginning with the day after the day on which the person became the occupier of the land
5	a person appointed to manage the site no longer does so; and within the period of 28 days beginning with the day after the relevant day the occupier notifies the relevant local authority that the person no longer does so	within the period of 3 months beginning with the day after the relevant day
6	a person appointed to manage the site no longer does so; and the occupier does not give the notification referred to in row 5 above	within the period of 28 days beginning with the day after the relevant day
7	the breach of regulation 4(1) (operating a site without being a fit and proper person) arises because the local authority has removed a person from the register; and within the period of 28 days beginning with the relevant day in relation to the local authority's decision the occupier notifies the relevant local authority of its intention to make a new application under regulation 6 (application for inclusion in the register) in relation to the site	within the period of 3 months beginning with the relevant day
8	the breach of regulation 4(1) arises because the local authority has removed a person from the register; and the occupier does not give the notification referred to in row 7 above	within the period of 28 days beginning with the relevant day
9	the breach of regulation 4(1) (operating a site without being a fit and proper person) arises because the local authority has rejected an in-time application; and within the period of 28 days beginning with the relevant day in relation to the rejected application the occupier notifies the relevant local authority of	within the period of 3 months beginning with the relevant day



	its intention to make a new application under regulation 6	
10	the breach of regulation 4(1) (operating a site without being a fit and proper person) arises because the local authority has rejected an in-time application; and the occupier does not give the notification referred to in row 9 above	within the period of 28 days beginning with the relevant day

### **The Fit and Proper Persons Register**

67. HBBC must set up and maintain a register of persons who they are satisfied are fit and proper persons to manage a site in their area. This register must be open to inspection by the public during normal office hours. This register also must be published online.
68. The register will provide a record of the outcome of the fit and proper person tests HBBC has carried out for sites. The register must 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;
  - (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).
69. Where a person has met the fit and proper person test, the register will give details of that person and of the site, including decisions made on how long a person's inclusion is for, up to a maximum of 5 years.
70. 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.
71. Where there are rejected applications, the following information must 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.

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.

It must be noted that the name of the rejected applicant will not be included on the register. HBBC will however be able to consider requests for further information about the entry on the register, for example, the details of the specific conditions attached and any additional information, on a case by case basis and in accordance with data protection legislation.

72. Where HBBC has, with the site owner's consent, appointed a person to manage the site, HBBC must include the following information:

- (a) the name and business contact details of the person;
- (b) the name and address of the site which the person has been appointed to manage;
- (c) the status of the person;
- (d) the dates of the first and last day of the period for which the person's inclusion in the register has effect;
- (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).

## APPENDIX 2

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### HINCKLEY AND BOSWORTH BOROUGH COUNCIL MOBILE HOMES ACT 2013 FIT AND PROPER PERSON - FEE POLICY

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#### **Introduction**

1. 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 site cannot operate unless Hinckley and Bosworth Borough Council (HBBC) 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).
2. 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 HBBC 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").
3. 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.
4. The Regulations permit HBBC 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.
5. Site owners will be required to submit a completed application from 1 July 2021 until 1 October 2021 (3 months) and pay the fee, outlined below, to HBBC.

#### **Fees for Fit and Proper Persons Register Applications**

##### **Initial application fee**

6. HBBC believes that fit and proper person assessment and/or checks to be included on the fit and proper register will take a total of 150 minutes per application. This time of 150 minutes includes updating and publishing the register.
7. Ultimately, the checks are likely to be carried out by the same officers who carry out the licensing functions and, therefore, their hourly recharge rate of £47.80 should be applied. Therefore, the fee is set at £125.51 for the fit and proper person application as detailed below.

<b>Application Process</b>	<b>Time (minutes)</b>	<b>Hourly Rate</b>	<b>Cost</b>
Reception/Validation of Application	60	47.80	47.80
Process Payment	10	47.80	7.97
Entry in Uniform	25	47.80	19.92
Land Registry Search (officer time)	10	47.80	7.97
Land Registry Search (@ Cost)			6
Create and issue decision notice	20	47.80	15.93
Update and Publish Public Register	15	47.80	11.95
Reminder of License Expiration	10	47.80	7.97
<b>Total Costs</b>	<b>150</b>		<b>125.51</b>

8. HBBC will take into account the following matters on which costs are incurred, or likely to be incurred, 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.

9. The cost is limited to recovering the costs of exercising the fit and proper person test function only and not other costs that have already been charges for by other service areas.

#### **Additional considerations for an application fee:**

10. HBBC 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 HBBC 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.

11. Where an applicant contacts HBBC before making an application, to ascertain the likelihood of the success of that application, HBBC 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.

12. Any preliminary advice HBBC provides, prior to receiving an application, must be accounted for in the fee and cannot be charged separately.

### **Such other matters considers to be relevant**

#### **Where no fee is applied**

13. In certain circumstances, HBBC 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**

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

#### **Revising Fees**

15. HBBC may revise its fees policy and will be required to publish the revised policy. Any changes will need to be justifiable and reasonable, ensuring full transparency for the site owner.

#### **Amending conditions attached to an entry on a register**

16. HBBC may alter the conditions attached to an entry on a register (by adding new conditions or changing or deleting existing ones), following a review. HBBC 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).
17. There are no requirements for a site owner to make an application for a condition to be altered.

#### **Site visits – Officer and travel time**

18. 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.

#### **Payment of fees**

19. As outlined above in paragraph 4, HBBC 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.

20. If HBBC decides not to approve an application the applicant is not entitled to a refund of the fee paid.