

<b>Report of:</b>	<b>Head of Environment &amp; Healthy Lifestyles</b>
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<b>Portfolio Leader:</b>	<b>Housing, Heritage &amp; Leisure</b>
<b>Key Decision:</b>	<b>No</b>
<b>Report Track:</b>	<b>Cabinet: 08/07/21</b>

**Cabinet**  
**8 July 2021**  
**Private Sector Housing – Mobile Home Site Licensing**  
**Fit and Proper Person Implementation**

**1 Purpose of Report**

- 1.1 To inform Cabinet of the introduction of the Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, (“the Regulations”) which implement a fit and proper person test for licence holders of relevant protected permanent mobile home sites.
- 1.2 To seek Cabinet endorsement of the Fit and Proper Person Fees Policy prepared by Officers;
- 1.3 To seek Cabinet approval and adoption of the Fit and Proper Person Determination Policy;

**2 Recommendation(s)**

- 2.1 That Cabinet endorses the Fit and Proper Person Fees Policy set out in Appendix A.
- 2.2 That Cabinet adopts the Fit and Proper Person Determination Policy set out in Appendix B;
- 2.3 That Cabinet instructs the Interim Head of Environment & Healthy lifestyles to implement all arrangements necessary to receive and determine applications and to create the Fit & Proper Person public register.
- 2.4 That the Interim Head of Environment & Healthy Lifestyles be authorised to review and make any amendments to these arrangements in the interests of operational efficiency and / or due to changes in legislation or government guidance.

### 3 Key Issues and Reasons for Recommendations

#### Key Issues

- 3.1 On 01 July 2021 new Regulations, the Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, (“the Regulations”) came into force. The Regulations require owners and managers of most residential caravan parks in England to be registered as a ‘fit and proper’ person.
- 3.2 The Council are accordingly required to introduce a fit and proper person test for site owners, or managers (unless they are eligible for an exemption under the Regulations) and to set up and maintain a public register of such persons. The Council will have to set up an application process, determine fees and adopt a ‘fit and proper’ determination policy.
- 3.3 The Regulations come into force in two parts. The first part (enabling applications to be made) came into effect on 01 July 2021 and allows until 30 September 2021 (3 months) for owners and managers to submit applications and for local authorities to determine these and set up a ‘fit and proper persons’ register. Given the number of sites in the District there are no anticipated difficulties in ensuring all applications are received and determined by the September deadline.
- 3.4 The second part comes into effect on 01 October 2021 and makes it a criminal offence from that date to operate a site unless registered by the local authority as a fit and proper person. There are potentially serious sanctions for non-compliance.

#### Reasons for Recommendations

- 3.5 Approval of the recommendations in this report will provide Officers with the necessary framework for administration of these new statutory requirements. Should Cabinet approve the recommendations, Officers will contact with all site owners in the District to advise on the process for making and determining applications and for inclusion in the register.

### 4 Relationship to Corporate Priorities

- 4.1 This report supports the Council’s Corporate Priorities as follows:

- (i) Supporting Economic Recovery

Unsuitable persons are not permitted to operate mobile home sites, so ensuring legitimate operators are protected and that criminals or those deemed otherwise unsuitable do not gain an unfair competitive business advantage.

- (ii) Supporting Health & Wellbeing

The health, safety and wellbeing of individuals living in mobile homes, many of whom are vulnerable, is protected from illegal or corrupt practices,

including harassment and illegal eviction, forced sale, disconnection of utilities etc.

(iii) Financially Resilient Council

The costs of administering the regime are recovered through application fees, so are not subsidised by local Council Tax payers or the local authority;

<b>5 Report Detail</b>
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### **Background**

- 5.1 The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, (“the Regulations”) came into force on 01 July 2021. The Regulations require owners and managers of most residential caravan parks in England to be registered as a ‘fit and proper’ person. All local authorities will be required to keep a register of persons deemed ‘fit and proper’ to operate such sites within their District.
- 5.2 This legislation has been enacted to ensure that occupiers of homes on such sites are protected and that sites are not operated by criminals, or otherwise unsuitable individuals.
- 5.3 The Council are accordingly required to introduce a fit and proper person test for site owners, or managers (unless they are eligible for an exemption under the Regulations) and to set up and maintain a public register of such persons.

### **Fit and Proper Test**

- 5.4 The Council must be satisfied that the site owner “*is a fit and proper person to manage the site*” or, if the owner is not the manager, “*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.*”
- 5.5 Principally, the fit and proper person test applies to a “relevant protected site”. A relevant protected site is a site which requires a licence, and which is not solely for holiday purposes or is otherwise not capable of being used all year round. The fit and proper person requirement will ensure that site owners, or their managers, have integrity and follow best practice. Additionally, it provides the safeguard that such individuals will not pose a risk to the welfare or safety of persons occupying mobile homes on the site i.e. park home owners.
- 5.6 When conducting the fit and proper person assessment, The Council must consider points relevant to the application such as:
- *Is the individual able to conduct effective management of the site.*
  - *Competence to manage the site*
  - *The management structure and funding arrangements for the site*
  - *Personal information relating to the applicant concerned including a criminal record check or self-declaration statement*

A proposed fit and proper determination policy is attached as Appendix B

- 5.7 Operators of holiday parks and those residential parks which are defined as ‘non-commercial family occupied sites’ (i.e. occupied only by members of the owner’s family and not operated on a commercial basis) are exempt.
- 5.8 The number of known sites within the District is relatively small, with four commercial sites, three family owned and occupied sites and one unregulated site.

### **Applications and Fees**

- 5.9 The Regulations come into force in two parts. The first part (enabling applications to be made) came into effect on 01 July 2021 and allows until 30 September 2021 for owners and managers to submit applications and for local authorities to determine these and set up a ‘fit and proper persons’ register.
- 5.10 The second part comes into effect on 01 October 2021 from which date it will be criminal offence to operate a relevant mobile home site unless registered as a fit and proper person with the local authority. There are potentially serious sanctions for non-compliance.
- 5.11 A site owner under the Regulations must apply to their local authority for the relevant person (themselves or their appointed manager) to be added to the register of fit and proper persons managing sites in their area (“the register”).
- 5.12 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. The Regulations permit the Council 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.
- 5.13 Charges will be limited to recovering the costs of exercising the fit and proper person test function only, including the items in 5.6 above and setting up and maintaining the register. The Council is not able to recover other costs that have already been charged for by other service areas. Details of the proposed charges are contained in Appendix A.
- 5.14 An application must be accompanied by the relevant application fee. If a fee is required and is not included with the application, the application is not valid. Unless a valid application is made before the fit and proper person requirements come fully into force a site owner that continues to operate the site will commit an offence and could be prosecuted.
- 5.15 All fees must be published in an authority’s Fees Policy and must be transparent and reasonable. A local authority can revise their fees policy at any time but where they do so they must publish the revised policy.
- 5.16 The items that can be included in calculating both fees are set out in published [fee policy guidance](#), to which officers have had regard in compiling the information in Appendix A.

- 5.17 In certain exceptional circumstances a local authority may, with the site owner's consent, appoint a site manager. The local authority would be able to recover from the site owner, the costs they incurred in making the appointment.

## **6 Implications**

### **6.1 Financial**

It is not anticipated that there will be a significant income received by the Council for the administration of this duty given the low number of relevant protected sites to which this requirement will apply. However, there will be some minor administration costs involved in maintaining the public register and should any appeals to the First Tier Tribunal (Property Chamber) be made these will need to be defended, which may incur costs.

### **6.2 Legal**

The Council has a statutory duty as a local housing authority to make the necessary arrangements to administer and enforce these requirements.

There is no requirement to enter formal public consultation, however discussion has taken place with neighbouring authorities as to the level of their fees.

Advice will be sought from Legal Services and statutory guidance will be taken into account when determining the course of action when a relevant offence has been committed.

### **6.3 Human Resources**

None

### **6.4 Section 17 (Crime Prevention)**

The introduction of the fit and proper person test will provide another measure in the toolkit for tackling criminal or otherwise unsuitable site operators.

### **6.4 Risk Management**

None

### **6.5 Equality & Diversity**

None

### **6.6 Climate Change**

None

## **7 Appendices to the Report**

Appendix A: Fit and Proper Person Fees Policy

Appendix B: Fit and Proper Person Determination Policy

**Previous Consideration**

No

**Background Papers**

None.

## Cannock Chase District Council – Proposed Fees Policy

### Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020

#### Key Principles

- Time is considered in blocks of 15 minutes taking into account natural breaks between tasks.
- Fixed costs are added in addition to the time taken to complete the task
- Overall cost of management of the application and registration process, including defending decisions, is borne by the fee structure.
- Hourly rate includes salary and associated support service costs (HR, ICT, finance, building, utilities, software, consumables etc.)

	Officer time (hrs)	Fixed costs incurred (£)
<b>(a) Initial enquiries;</b> This includes informal discussion, explanation and liaison prior to applications being made. It is suggested that there will be a significant requirement at this stage	1	
<b>(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;</b> Initial letters requesting application, acknowledgement letters, memos to internal teams, internet searches plus allowance for one additional letter to applicant to request more information/clarification of application. Costs assume internal memos by email, contact with applicant is by post.	2	
<b>(c) Sending out forms</b>	0.25	
<b>(d) Updating files / computer systems and websites</b> FLARE database updates, storage and linking of documents.	0.75	
<b>(e) Processing the application fee</b> Assumed telephone payment via contact centre - different charge out cost?	0.25	
<b>(f) Land Registry searches</b> Most sites will require one search, a minority will require two where there is a leasehold. A few will require no search as they were purchased prior to the requirement to register land. Overall consider one search at £4 + time.	0.25	4
<b>(g) Time for reviewing necessary documents and certificates</b> Assuming review of DBS and returns from consultation, financial and management arrangements provided with application, including such checks as necessary to determine validity of the stated management of financial position.	1.5	

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	<b>Officer time (hrs)</b>	<b>Fixed costs incurred (£)</b>
<b>(h) Preparing preliminary and final decision notices</b> Assuming that majority of applications require no preliminary or final decision notices, with 1:5 applications requiring imposition of conditions that will take several officer hours.	0.5	
<b>(i) Review by manager or lawyers; review any representations made by applicants or responses from third parties</b> Assuming that majority of applications require no such review with 1:5 applications requiring conditions that necessitate review of representations etc that will take several officer hours	0.5	
<b>(j) Updating the public register</b> It is assumed that the majority of applications will be accepted without conditions or the need for the local authority to appoint a manager, with 1 in 10 applications requiring greater information to be recorded on the register.	0.25	
<b>(k) Carrying out any risk assessment process considered necessary</b> Assessment of application to decide whether to unconditionally grant, refuse, or grant with conditions.	0.5	
<b>(l) Review of decisions or in defending appeals</b> It is assumed that the majority of applications will be accepted without a requirement to review decisions or to defend appeals, but when these occur they are significantly time consuming	1	
Total hours	8.75	
Officer rate (£/hour)	45	
Total officer cost	393.75	
Total Fixed costs		4
Total Application costs	397.75	
Suggested Fee rounded to nearest £10	<b>400</b>	

**Inspection of Sites to Assist in Determination of Fit and Proper Person**

Where a site has been subject to inspection within the last 12 months as part of site licensing requirements then a further inspection will not normally be carried out as part of the fit and proper person determination. However, the Council reserves the right to carry out a site inspection where either: a) the site is no longer to be operated by the person named on the licence at the time of last inspection; b) significant compliance issues were raised on the last site inspection; c) any other reasonable purpose (for example, in response to receipt of complaints from site occupiers). **In such circumstances an inspection will be charged at £45 per hour up to a maximum of £180.00**



**The following elements in the Fees guidance have been considered:**

<p>In addition, a local authority will need to make such inquiries as are necessary in connection with the application, such as those relating to the applicant's management and financial standing.</p>	<p>Included in <b>(g)</b></p>
<p>All time taken in establishing the information required to make an informed decision will be allowed to be included in the application fee, whether or not the entry on the register is granted.</p>	<p>Included</p>
<p>Where an applicant contacts the local authority before making an application to ascertain the likelihood of the success of that application, the authority is expected to give such informal advice, including on likely conditions that may be attached to an entry, so the applicant can make an informed judgement on how to proceed with the application.</p>	<p>Included in <b>(a)</b></p>
<p>The local authority cannot charge separately for its advice or work in advance of receipt of the application. However, it can build into its fee structure for such applications the costs (or likely costs) it incurs as a result of such pre-application advice, including where no formal application is subsequently submitted.</p>	<p>Included in <b>(a)</b></p>

## Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020

### Fit and Proper Person Determination Policy

#### Introduction

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, (“the Regulations”) require the manager of a site to be a Fit and Proper Person. The Council are required to introduce a fit and proper person test for mobile home site owners, or the person appointed to manage the site, unless they are eligible for an exemption under the Regulations<sup>1</sup>.

The Regulations, made on 23 September 2020, allow local authorities to receive applications from site owners, or the person appointed to manage the site, from 1 July 2021 up to and including 30 September 2021.

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.*”

Where a site owner or their manager fails the fit and proper person test, and they are unable to identify and appoint a suitable alternative manager, who must pass the fit and proper person assessment, the Council can instead appoint a person to manage the site, but only with the consent of the site owner.

Principally, the fit and proper person test applies to a “relevant protected site”. A relevant protected site is a site, which requires a licence and which is not solely for holiday purposes or is otherwise not capable of being used all year round. The fit and proper person requirement will ensure that site owners, or their managers, have integrity and follow best practice. Additionally, it provides the safeguard that such individuals will not pose a risk to the welfare or safety of persons occupying mobile homes on the site i.e. park home owners.

#### The Evidence

When conducting the fit and proper person assessment, The Council will consider:

#### **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, the Council must have regard to:

- (i) whether the person has a sufficient level of competence to manage the site;

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<sup>1</sup> \*i.e. it is a non-commercial, family occupied site under Regulation 3

- (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*

Whether relevant management structures are in place and whether they are adequate to ensure effective management of the site. The Council should try and 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 complex issues as a result of this, such as needing the court's permission to serve a claim in a foreign country. The applicant's interest in the land will also have an important impact, as would their financial standing, management structures and competence, all of which could contribute to the overall assessment of their suitability to manage the site effectively.

*(c) The proposed management structure and funding arrangements in place for managing the site*

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 made available on request by the Council if required.

Another consideration is if funding is through a third party (including an associated company), the Council should be wary if this is not disclosed as this will impact on the Council's ability to deem whether the application is financially viable.

**Personal information relating to the applicant concerned.**

This would include a self-declaration to 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);

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- (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 live and 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).

The Council in addition will carry out necessary checks and require appropriate documentary evidence in respect of right to live and work status, criminal record history and insolvency / disqualifications.

The Council have a duty to investigate any conduct which could amount to harassment and any evidence obtained should be reviewed to determine whether it is sufficient to be used to prosecute a site owner. Rely on convictions by the courts as evidence of harassing behaviour which would reduce the risk of the Council being successfully challenged on any refusal to approve an applicant on this basis.

The Council 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. The Council may address this by attaching conditions to the individual's entry on the register.

Upon rejection of a person's application this should be centrally recorded and include the details of the person involved and the reasons for the rejection.

### Items to take into consideration

1. "The applicant" is defined at paragraph 2 of the Regulations as "the person who makes an application under regulation 6".
2. 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".

3. 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.
4. 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.
5. 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, the Council 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.
6. The Council need 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.
7. The Regulations are drafted widely giving the opportunity to take into consideration other relevant matters. However, the Council 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.

8. The Council 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 the Council 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.

9. Allegations which have not been investigated or documented may be difficult to use as evidence to support an authority's decision. Therefore, evidence must be obtained to support any additional matters taken into consideration for the application. This is to mitigate any risks should they face being challenged at a tribunal because of their 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 (even though the Regulations incorrectly state that this information is contained in paragraph 13) 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**

10. 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.

11. The name and address of any and all 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.

12. 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**

13. 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**

14. 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**

15. 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.
16. 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 the Council 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 certificates /status checks / self-certification**

17. The Council will seek basic Disclosure and Barring Service (DBS) Check and documentary evidence of right to live and work in the UK in respect of applicants' compliance with paragraph 2 (a)-(h) and will in addition carry out checks in relation to insolvency. This will be in addition to and in support of any self declaration.

A DBS check will be required:

- (a) where the relevant person is an individual; and
- (b) for each individual in relation to whom the site owner is required to provide information.

The certificate must have been issued no more than 6 months before the date of the application. It is for the site owner to ensure that any certificate they provide with an application meets this requirement.

### **Declaration**

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.

18. 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.

19. 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**

20. 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.

21. To be able to secure the proper management of the site, the Council 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**

22. The Council must decide 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.

23. On receipt of an application the Council may:

- (a) grant the application unconditionally;
- (b) grant the application subject to conditions; or
- (c) reject the application.

### **Granting the application unconditionally**

24. Where the Council is satisfied that the applicant meets the fit and proper person test unconditionally, they must include the applicant on the register for 5 years. The authority must issue a final decision notice to the applicant to inform them of its decision.

25. 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)**

26. In some circumstances, the Council 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, the Council can grant an application subject to those condition(s). The Council can also grant an application for less than 5 years.

27. It may be the case that the Council 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 the reasons are clear and justifiable for attaching any condition(s) and that any conditions imposed can be enforced.

### **What can a condition relate to?**

28. 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.

29. 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. 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.

30. Where the person has committed those listed offences or contravened legislation, these breaches will be considered, together with all the other information available, when reaching a preliminary decision.
31. 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.

**Example Conditions (not exhaustive List)**

32. **Example 1** - The Council 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, the Council 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 "CPD customer service/Dealing with complaints" course by a certain period. However, should the Council consider the actions as unlikely to achieve the desired outcome, the site owner could be removed from the register.

33. **Example 2** – If, when considering an application, certain documents or information are unavailable to the applicant, because of delays from third parties, the Council may wish to attach a condition to the entry on the register that the site owner "is to provide the authority by registered post, with the original xx document by xx date".
34. **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**

35. Should the Council determine that the applicant does not meet the requirements, and attaching conditions would not be appropriate, the Council can refuse to grant the application.
36. Where the Council 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.
37. 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**

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

### **Final decision notice**

40. The Council 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.
41. 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**

42. 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 the Council. 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.
43. Where an applicant accepts the Council'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.

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

**Withdrawal or amendment of notice**

45. The Council 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.

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

47. 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**

48. If, after a person is included in the register, and new evidence relevant to the person's inclusion becomes available, the Council 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.

49. The Council will use their judgement when determining whether to review an entry and consider if 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 the Council decides to take any of the actions listed in paragraph 51 (a) to (c) above, the Council must serve a notice of any proposed action on the occupier.

50. The notice of proposed action must clearly state:

- (a) the date the notice of proposed action is served;
- (b) the action the Council proposes to take;
- (c) the reasons for it;
- (d) the date it is proposed that the Council 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.

51. A notice of proposed action is not required if the Council decides to remove a condition attached to an entry. The Council will make the site owner or their manager aware of the decision in writing and ensure the register is updated.

### **Notice of action taken**

52. 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.

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

54. Where the Council decides to take the action, the Council 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.

55. 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**

56. 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.

57. A site owner found guilty of any of the above offences will be liable on summary conviction to a level 5 (unlimited) fine.

### Defences

58. 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

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 Council under regulation 8(1)(a) (removal from the fit and proper register after new relevant evidence becomes available).	not less than two months before the end of the period of the person's inclusion in the register
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

Row	Circumstance	Relevant period for making an application in the circumstance
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 Council has removed a person from the register; and within the period of 28 days beginning with the relevant day in relation to the Council'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 Council 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 Council 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 its intention to make a new application under regulation 6	within the period of 3 months beginning with the relevant day
10	the breach of regulation 4(1) (operating a site without being a fit and proper person) arises because the Council 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

59. This register must be open to inspection by the public during normal office hours. This register will also be published online. Template found in the Government Guidance will be used.
60. The register will provide a record of the outcome of the fit and proper person tests the Council have 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).

61. 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.

62. 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.

63. 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. The Council 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.

64. Where the Council has, with the site owner's consent, appointed a person to manage the site, the Council 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).