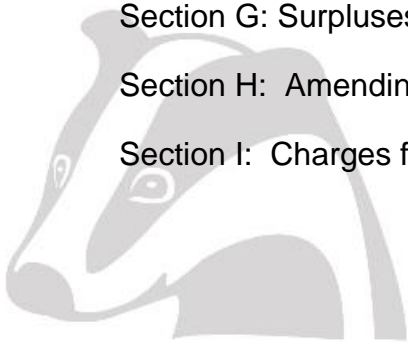


**FIT AND PROPER PERSON FEE POLICY FOR BROXBOURNE
BOROUGH COUNCIL**

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BOROUGH OF
BROXBOURNE

Introduction

1. The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 sets out the framework for a fit and proper person test for site licence holders or a person appointed to manage the site, of relevant protected sites in England.
2. The framework set out in the Regulations includes;
 - Powers for local authorities to charge fees in respect of “relevant *protected sites*” unless exempted, for considering applications to be included in a fit and proper register and for the administration and monitoring of the fit and proper person test.
 - Powers to appoint a person to manage a site with the site owner’s consent and recover costs they incur, or which will be incurred, in appointing a person to manage a site.
 - Powers to attach conditions to an entry on a register. The conditions may include those that require additional payments to be made to the local authority by way of annual fee.
 - That fees must be reasonable, that the authority must prepare and publish a fees policy before they can charge a fee and that an authority may revise their fees policy and, where they do so, they must publish the revised fee policy.
 - When fixing the application fee and deciding the amount and frequency of additional payments by way of annual fee, the local authority;
 - (a) must act in accordance with their published fees policy;
 - (b) may fix different fees for different cases or descriptions of case; and
 - (c) may determine that no fee is required to be paid in certain cases or descriptions of case.
3. This non-statutory guidance sets out advice on matters that can and cannot be taken into account in setting fees and how fees are to be calculated.

Section A: Fee policy

4. A local authority can decide whether or not to charge fees for their fit and proper functions in relation to relevant protected sites. It is also at the local authority's discretion whether they charge for all or any aspect of the fit and proper test. In reaching its decision the local authority may take into account:
 - The council's existing policy towards charging generally- if a council tends not to charge, they will have to justify charging in this case and re-evaluate charging for other licensable premises/ activities.
 - Where the council charges, there will be a legitimate expectation from residents that they will get a better service over and above what they currently receive (assuming the site owner passes on his application fee). Residents' expectations need to be managed as dealing with non-fit and proper person complaints will not be funded through the fee structure.
 - Charging will provide a revenue stream to fund the council's fit and proper person functions.
5. Both the level of fees and how they are charged are, subject to legal restrictions, at the discretion of the local authority. Fees should be fair and transparent so that anyone required to pay a fee must know what they will be or are being charged for. Fees should also only cover the costs (or part of the costs) incurred by a local authority under its functions in Section 12 of Part 1 of the Act.
6. If an authority decides to charge fees, they must prepare and publish a fees policy before charging any fee in relation to an application for entry or an entry on the register.
7. If a local authority revises its fees policy, it must publish the revised policy and act in accordance with that policy.
8. There is no requirement to consult with site owners or homeowners on setting fees but a local authority may consider doing so.
9. The fee policy should set out:
 - the fees payable for (a) applications for an entry on the register and (b) annual fee payable for an existing entry;
 - the matters and appropriate costs taken into account in setting each type of fee;
 - the method of apportionment of those costs in setting those fees;
 - if an annual fee is payable, when it is to be paid; and
 - such other matters as the local authority considers to be relevant

Section B: Paying fees

10. A local authority 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 included, the application will not be valid and the site owner could be in breach of the Regulations.
11. If a local authority decides not to approve an application, the applicant will not be entitled to a refund of the fee paid.
12. The annual fee must be set as a condition to an entry on the register (see Section D - setting conditions of the Fit and Proper guidance). The condition should state the amount and date by which the annual fee is due, that a failure to pay will be a breach of the condition and if convicted the site owner could face an unlimited fine.

Section C: Costs that can be included in application fees

13. Many applications will be straightforward and will be able to be processed quickly with straightforward enquiries. Others may involve complicated issues which require extensive resources to investigate. We would anticipate a flat rate fee for consideration of all applications based on the average complexity of a case.
14. The overriding consideration is that fees set as published by the local authority must be reasonable and transparent and there must be consistency in the fee structure and its application.
15. The following may assist a local authority in determining what matters it can have regard to in setting application fees under its policy.

Applications for inclusion in a fit and proper register

16. It is recommended that a local authority take into account the following matters on which costs are incurred (or likely to be incurred) (by whichever department, including costs incurred by contracting out) when determining its fee policy for consideration of applications for entry on a fit and proper 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;
- (l) reviews of decisions or in defending appeals.

17. 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.

18. 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.

19. 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.

20. 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.

Section D: Setting an annual fee

21. In setting the level of annual fee, local authorities may take into account the following matters on which costs are incurred (by whichever department, including costs incurred by contracting out):

- (a) letter writing/ telephone calls etc. to make appointments and requesting any documents or other information from the site owner or from any third party in connection with the fit and proper process;
- (b) handling enquiries and complaints;
- (c) updating files/ computer systems and website if appropriate;
- (d) processing the annual fee;
- (e) time for reviewing necessary documents and certificates;
- (f) preparing reports on breaches of conditions attached to an entry;
- (g) review any representations from an applicant or third parties, including reviews carried out by manager or lawyers
- (h) carrying out risk assessment where considered necessary

- (i) time spent on consulting the site owner and third parties
- (j) time spent on meetings/discussions and in giving informal advice and assistance to site owners

Site visits – Officer and travel time

22. Officer time can be considered as it may be necessary to visit a site to ascertain whether or not the condition(s) has been met. Travel time to and from the site, including fuel costs can also be taken into account and could be calculated using a single value for travel costs to apply to all sites.

Annual fees – options

23. For the sake of transparency, it is necessary to produce and publish a Fees Policy for the Fit and Proper Person application fee. The Council will not charge an additional fit and proper person fee to cover expenses incurred in administering the fit and proper person test by way of an annual fee.
24. The Mobile Homes Act 2013 guide provides several variations of a fee structure that can be considered by a local authority. A local authority can adopt a fee structure it is comfortable with and should consider the pros and cons to each.

The following 3 options have been considered:

- A. Fixed Initial Application Fee
- B. Risk Based Assessment Fee
- C. No Fee

Option B: A fee based on a risk assessment has been ruled out on the basis it would mean that a site that is less well run and which requires greater resources from the Local Authority to ensure compliance with the fit and proper person's requirements to effectively manage the site would attract a higher fee.

The law does not prevent the site owner from passing on the fee to occupiers of the site, thus a higher fee will be passed on to occupiers via their annual pitch fees resulting in them paying more to live on a poorly managed site. This will cause upset and will lead to more complaints which will affect the Council's administrative resources for dealing with the increased workload.

Option C: has been ruled out even though it would safeguard against owner's passing on the fit and proper person fee because the Council charges for all other licensing function in the private sector housing service and the implementation of the scheme and the processing of applications is an additional resource burden, so it is fair and proper to apply a fee.

Decision

25. The Council has decided to adopt Option **A**: Fixed Initial Application Fee as it is deemed to be straight forward and fair because the cost to the Council in terms of officer time and administration is the same regardless of the size and nature of the site.
26. The Council has considered the possibility of the site owner passing on these fees and realises that this could mean that residents on smaller sites have a disproportionately larger pitch fee to pay than residents on larger sites. However, this fee policy relates to the administrative costs for processing applications only and is not connected to activities related to Site Licensing Fees which have been banded dependent on the size of the site to take account of the Councils involvement in dealing with site licensing complaints.

The Council has not consulted with residents and park homeowners in relation to this fee policy as it is not legally obliged to do so.

The Fee Structure for inclusion in the Fit and Proper Person Register for mobile home sites is attached at Table1.

Table 1

* MHCLG New burdens payment calculated as follows:

1	Set up register (10 hours @ 12.77/hour)	£128
2	Making application forms available (12 hours @ £12.77/hour)	£153
3	Training - officials time (7 hours @ £12.77/hour)	£89
4	Approx. cost of training	£198
	Total cost for the authority	£568

Section E: Factors that cannot be included in fees

27. Any charges must be limited to recovering the costs of exercising their fit and proper test function as it relates to relevant protected sites. A local authority cannot take into account when setting fees, costs incurred in exercising any of their other functions under the Caravan Sites and Control of Development Act 1960 (the Act) or costs that have already been charged for by other service areas.
28. No fees can be charged for holiday or other non permanent residential sites. Sites which are in mixed use i.e. partly holiday with some permanent Mobile Homes Act protected residential, fall within the definition of relevant protected site and fees can, therefore, be charged. Equally, functions relating to such sites can be taken into account in setting fees.

Section F: Exempting certain types of site

29. A site is exempt from the fit and proper person test if it is only occupied by members of the same family and is not being run as a commercial residential site.
30. Whilst adopting a fees policy a local authority can decide to exempt other categories of sites from payment. A local authority must however be able to justify any such decisions.
31. Any exemption(s) must be rationale, objective and consistent and set out in the fee policy. Site categories which are exempted can subsequently be brought within the charging structure by a change to the fee policy.
32. A local authority should not charge higher fees for non-exempted sites to cover its costs in relation to their fit and proper person functions for those sites that are exempted from payment.

Section G: Surpluses and deficits

33. The Regulations do not specify that the local authority in setting annual fees must advise the site owner of the extent to which they have had regard to deficits and surpluses from the previous year.
34. A local authority must not however make a profit and can only pass on to the site owner, their costs incurred in carrying out the fit and proper function. Equally, a local authority is not expected to make a loss in carrying out its fit and proper functions. Overall, the fit and proper test can be a self-financing function which local taxpayers are not required to subsidise.

35. We would recommend as best practice, that each year the local authority assesses their previous costs to determine if they were accurate. Where there is a deficit of expenditure the excess monies need to be reflected in the fee charged to the site owner in the next year.
36. So, for year 2, the fee to the site owner will be the licence fee for year 2 minus the money not spent from year 1.

Example 1: the fee for 2020 was £500; a review at March 2021 shows LA cost of licensing for 2020/21 is actually £350. The LA anticipates that the costs for 2021/22 will be £400. So for the next licensing period 2021/22 the fee to the site owner is $£400 - £150 = £250$

Example 2: licence fee for 2020 was £500; a review at March 2021 shows LA cost of licensing for 2020/21 is actually £550. The LA anticipates that the costs for 2021/22 will be £550. So for the next licensing period 2021/22 the fee to the site owner is $£550 + £50 = £600$.

37. The above examples are not exhaustive. The authority can take account of any relevant increases or decreases in costs since the last fee was set but must bear in mind that the changes are to the totality of the relevant costs. Fees should not vary on an individual case by case basis, even if for example, the increase in cost of site visits is due to activity on one site.

Section H: Amending conditions attached to an entry on a register

38. A local authority may alter the conditions attached to an entry on a register (by adding new conditions or changing or deleting existing ones), following a review. The local authority must notify the site owner of its interim decision (except in the case where it is deleting a condition) and consider any representations made by the site owner, before reaching a final decision. If the site owner is unhappy with the decision to alter or not alter the conditions, they will have a right of appeal to the Tribunal.
39. There is no requirement for a site owner to make an application for a condition to be altered. Any costs involved with amending existing conditions or adding new conditions to an entry must be factored into the cost of calculating the annual fee.

Section I: Charges for appointing a person to manage a site

40. Where a local authority, with the site owner's consent, has appointed a person to manage a site, the local authority can recover from the site owner, costs they incurred or to be incurred, in making the appointment. The costs must however be reasonable.
41. Costs that can be recovered will depend on the agreement made between the local authority and the site owner. Before entering into any discussions or agreements relating to the appointment of the manager, local authorities should seek relevant advice from their legal officers.