



Caravan Sites and Control of Development Act 1960

Fit and Proper Person Test

DRAFT

DETERMINATION POLICY

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Fit & Proper Person Test Determination Policy - Contents

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Part 1 - General

1.1 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 Melton Borough Council is accordingly 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 Regulations¹.

The Regulations introduced on 23 September 2020, allow local authorities to receive applications from site owners, or the person appointed to manage the site, from 01 July 2021 up to and including 30 September 2021.

Melton Borough Council (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 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 relevant protected sites. A relevant protected site is a site which requires a site licence, 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.

This Determination policy will be available on Melton Borough Council's website.

1.2 Definitions

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 defined at paragraph 2 of the Regulations to mean 'the subject of the fit and proper person assessment under Regulation 7'. This could be the site owner, or the person appointed by the site owner to manage the site.

'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. Where the applicant is a partnership, a relevant officer will be a partner. Where the applicant is a body corporate, a relevant officer will be a member of the management committee of that body.

3. The conduct of any person associated or formerly associated with the relevant person (whether on a personal, work or other basis) is 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 already 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. It is advisable, however, 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 will be required to establish whether an individual is considered to be an associate of the relevant person and 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 on the quiet enjoyment of their home.
7. The Regulations are drafted widely to allow opportunity for local authorities to take into consideration other relevant matters. The Council is mindful that poor management practices do not necessarily 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 this is highly relevant to determining any question of suitability or competence. 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 is able to decide the specific matters deemed 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 believes 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. The Council aim to obtain evidence to support any additional matters that they require to be considered for each application. This is to mitigate any risks should the Council's final decision be challenged at a tribunal. The evidence could include previous tribunal and court decisions, documents or records from Companies House or other public bodies or financial institutions. It is not anticipated that allegations which have not been investigated or documented will be used as evidence to support an authority's decision.

1.3 The Fit and Proper Persons Register

The local authority 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 must also be published online.

The register will provide a record of the outcome (as discussed above) of the fit and proper person tests the local authority have carried out for sites. The register must include the following:

- the name and business contact details of the person.
- the name and address of the relevant protected site to which the application relates.
- the status of the person (site owner or manager of the site).
- the dates of the first and last day of the period for which the person's inclusion in the register has effect.
- whether any condition is attached to the person's inclusion in the register.
- 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).
 - (iii) the date any condition is varied or satisfied (if applicable).

Where a person has met the fit and proper person test, the register will give details of that person and of the associated site, including decisions made on how long a person's inclusion may last (up to a maximum of five years).

In order to comply with the fit and proper person requirement, a site owner must submit a new application for the person (or alternative) to be included in the register. The new application must be submitted at least two months before the existing inclusion in the register period comes to an end.

Where there are refused applications, the following information must be included in the register:

- the name and address of the site to which the application relates.
- that an application in respect of the site has been refused.
- the date on which the application was refused.

Details of the refused 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. The name of the refused applicant will not be included on the register; however The Council will 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.

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

- the name and business contact details of the person.
- the name and address of the site which the person has been appointed to manage.
- the status of the person.
- the dates of the first and last day of the period for which the person's inclusion on the register has effect.
- whether any condition is attached to the person's inclusion in the register.
- 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).
 - (iii) the date any condition is varied or satisfied (if applicable).

Part 2 – Evidence

2.1 Application information

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

1. Details of the site and the applicant

Information provided must include:

- the applicant's name and business contact details.
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.
- the name and address of the site.
- evidence of the applicant's legal estate or equitable interest in the site.
- confirmation that the applicant is the occupier within the meaning of Section 1 of the Caravan Sites and Control of Development Act, 1960.
- the name and business contact details of any other person that has a legal estate or equitable interest in the site.

2. The name and address of each other relevant protected sites

Information provided must include the name(s) and address(es) of any other relevant protected site(s):

- for which the applicant holds a licence issued under Section 3 of the Caravan Sites and Control of Development Act, 1960.
- in which the applicant has a legal estate or equitable interest.
- that the applicant manages.

The applicant must clearly specify whether the application is made in respect of either the applicant, the site owner, or the person that the applicant or site owner has appointed to manage the site.

3. Information relating to the site manager

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 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. 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 provide the Required Information.

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

When the applicant is the relevant person, 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, 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.

5. Additional information where applicant is relevant person and not an individual

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 is not an individual, the individual that B has appointed or intends to appoint to be responsible for the day-to-day management of the site ('D'), 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.

The Regulations prohibit the operation of a relevant protected site unless the site owner or site manager has been assessed by the local authority as a fit and proper person. This is to ensure that consistent standards are applied to companies and other organisations that are not individuals.

2.2 Criminal record certificates

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.

The Council has the discretion to require the criminal record to be either basic or enhanced.

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.

This authority will consider these and other relevant factors in making its decision, depending on all the circumstances of the case.

2.3 Declaration

A declaration made and signed by the 'appropriate person' which means:

- where the applicant is a company, a director or other officer of the company.
- where the applicant is a partnership, one of the partners.
- where the applicant is a body corporate and the conduct of the management of the body is vested in its members, a member
- where the applicant is not a body falling within the above, a member of the management committee.
- where the applicant is an individual, that individual.

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.

The declaration should state that the information provided in the application is correct and complete to the best of the applicant's knowledge and belief.

2.4 Relevant considerations

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.

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, the management structure (or proposed management structure) and the funding arrangements for the site in question.

2.5 Decisions

On receipt of an application the local authority may:

- grant the application unconditionally.
- grant the application subject to conditions.
- reject the application.

Granting the application unconditionally

Where the Council is satisfied that the applicant meets the fit and proper person test unconditionally, the applicant must be included on the register for a maximum five years. The Council will issue a final decision notice to the applicant to inform them of its decision.

The final decision notice must clearly state:

- the date the final decision notice is served.
- the final decision.
- the reason(s) for the decision.
- when the decision is to take effect.
- information about the right of appeal to the First Tier Tribunal and the period within which an appeal may be made.

Grant the application subject to conditions

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 local authority can grant an application subject to those conditions. The local authority can also grant an application for less than five years.

The Council may decide to include the person on a register subject to conditions, if it would only be satisfied that the person would meet the fit and proper requirement if the conditions 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 for The Council to ensure clear and justifiable reason for attaching any conditions and that any conditions imposed can be enforced.

Conditions will need to be clearly stated for the applicant's understanding and this will allow The Council to ensure that the conditions are enforceable.

Table 1: Example requirements

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

To what can a condition relate?

The fit and proper person test is aimed at ensuring that the person managing the site is competent and any conditions should relate directly to the person's ability to secure the proper management of the site.

Where a person has contravened legislation or committed offences set out above, it is not recommended that conditions are set in relation to those matters. Such a condition would be unlikely to meet the tests set out above; for example, if a person has committed fraud or violence, that exact incident cannot be reversed by requiring the person to perform a specific task.

In cases where the person has committed those listed offences or contravened legislation, The Council will consider these breaches in tandem with all the other information available to reach a preliminary decision.

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. An example of a suitable condition could relate to the payment of an annual fee. A condition can also be set with respect to ensuring the relevant person has the ability to secure the proper management of the site.

Example 1 - A local authority 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 xxx 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 local authority 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. Should the local authority consider the actions as unlikely to achieve the desired outcome, however, the site owner could be removed from the register.

Example 2 – If, when considering an application, certain documents or information are unavailable to the applicant, because of delays from third parties, the local authority 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'*.

Example 3 - An associated person has been visiting the park and through their action xxx, 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 xxx on the site'*.

Decisions not to include the applicant on the register

Should The Council determine that the applicant is not fit and proper and that attaching conditions would not be adequate to address the concerns, a refusal to grant the application can be issued.

Where the Council has decided not include the applicant on the register, a preliminary decision notice to the applicant must be issued.

The preliminary decision notice must clearly state:

- the date the preliminary decision notice is served.
- the preliminary decision.
- the reason(s) for the decision.
- the date it is proposed that the final decision will take effect.
- information about the right to make written representations.
- 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.

Final decision notice

Following the end of the 28-day representation period, the Council must, as soon as is reasonably practicable, make a final decision and serve the decision notice on the applicant.

The final decision notice must set out:

- the date the final decision notice is served.
- the final decision.
- the reason(s) for the decision.
- when the decision is to take effect.
- information about the right of appeal and the period in which an appeal may be made.
- 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.
- where the decision is to grant the application subject to conditions, the consequences of failing to comply with any conditions.

2.6 Right to make a representation

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 the day after the date on which the notice was served. The Council is obliged to consider any such representations before making a final decision.

2.7 Appeals

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:

- include the relevant person on the register for an effective period of less than five years.
- including the relevant person on the register subject to conditions.
- rejecting the application.

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. Failure to do so is an offence.

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

2.8 Withdrawal or amendment of notice

There may be circumstances where a local authority may decide not to continue or to withdraw a previously agreed action such as after serving:

- a preliminary decision notice but before service of the final decision notice.
- a final decision notice but before the decision to which it relates takes effect.
- a notice of proposed action but before the proposed action is taken.

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

There are no requirements for notices to contain specific information, however, it is recommended that a withdrawal or amendment notice should state:

- that it is withdrawing or amending the original notice (a copy of the original notice should be attached for reference);
- the reason(s) for withdrawing the notice;
- the date it takes effect;
- the implications of the decision in relation to the person's entry on the register.

2.9 Removal from the register

If, after a person is included in the register, new evidence relevant to the person's inclusion becomes available, the Council may decide to:

- remove the person from the register.
- impose a condition on the inclusion of the person in the register (regardless of whether there are conditions already imposed);
- vary a condition.
- remove a condition.

The Council must use its judgement when determining whether to review an entry and consider any subsequent actions are required. Any such decision should be related to the person being a fit and proper person rather than to site licensing issues which are governed separately. If the Council decides to take any of the actions listed in paragraph above, a notice of any proposed action will be served on the occupier. The notice of proposed action must clearly state:

- the date the notice of proposed action is served.
- the action The Council proposed to take.
- the reason(s) for the action.
- the date it is proposed that The Council will take the action.
- information about the right to make written representations.

- 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.
- where the proposed action is to impose a condition(s) on the inclusion of a person on the register or to vary a condition(s), the consequences of failing to comply with said condition(s).

A notice of proposed action is not required if the Council 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, therefore a notice of proposed action is not required. The Council will endeavour as good practice to make the site owner or their manager aware of the decision in writing and ensure the register is updated.

2.10 Notice of action taken

Where a notice of proposed action is given, the occupier will have 28 days, starting from the day after the date the notice is served, in which to make representations.

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

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 five working days beginning with the day after the day on which the action was taken.

The notice of action must set out:

- the date the notice of action is served.
- the fact that they have taken the action.
- the reasons for doing so.
- the date the action was taken.
- information about the right of appeal and the period within which an appeal may be made.
- 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.
- 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.

2.11 Offences

There are three offences which can occur within the Regulations:

- 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. In this instance, 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.

The Council is responsible for enforcing the Regulations. A site owner found guilty of any of the aforementioned offences will be liable on summary conviction to a fine.

2.12 Defences

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

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 01 October 2021.	From 01 July 2021 before 01 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 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 three 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 three 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 refused an in-time application and within the period of 28 days beginning with the relevant day in relation to the refused application the occupier notifies the relevant local authority of its intention to make a new application under regulation 6.	Within the period of three 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 local authority has refused 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.

Part 3 – Evidence

3.1 General Principles

When conducting the fit and proper person assessment, The Council must consider the following points relevant to the application:

3.2 Effective management

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. The local authority 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;
- (iii) the proposed management structure and funding arrangements.

- (i) Competence to manage the site

This includes reviewing the competency of the appointed individual. The individual must have sufficient experience or have received sufficient training in site management and be fully aware of the relevant law as well as health and safety requirements.

- (ii) The management structure and funding arrangements for the site

The Council must consider whether relevant management structures are in place and whether they are adequate to ensure effective management of the site. The applicant is expected to have a robust management plan which should address the following points:

- 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.
- refuse/recycling removal.

It is advisable that the site is managed by an applicant based in the United Kingdom. A management structure would be unlikely to be considered 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, for example, requiring 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 effectively manage the site.

(iii) The proposed management structure and funding arrangements in place for the site

The Council 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.