

**Caravan Sites and Control of Development Act 1960 (as amended)  
Procedure for Determination of Applications etc. regards the Licensing of  
Permanent Residential Caravan Sites****Report by Dr Mary Smith, Director, Education, Communities & Economy****1.0 Purpose of Report**

To seek approval for the arrangements to dispose of Licensing applications made in relation to permanent residential caravan sites within Midlothian Council area; including checking on the fit and proper person status of an individual making an application.

**2.0 Background**

Members will recollect that on 15 January 2019 Cabinet considered a paper relating to the new regime for the Licensing of Residential Caravan sites as introduced by amendment to the Caravan Sites and Control of Development Act 1960 (the 1960 Act) by the Housing (Scotland) Act 2014. The paper was remitted to Midlothian Council on 12 February 2019.

Alongside new enforcement powers, the 1960 Act (as amended) provides for regulations to be made relating to the operation of a residential caravan site licensing regime.

All existing sites must apply for a new, 5 year renewable, licence by 01 May 2019.

The Act states that Licences can only be issued to occupiers of land;

- i) who have the benefit of planning permission for use as a residential caravan site, and;
- ii) where licence applicants, and other relevant persons, satisfy the requirements of the “fit and proper person test”.

The local authority must determine a relevant permanent site licence application within 3 months of receipt. Failure to do so results in the application being automatically approved.

**3.0 Legislative requirements regarding the Fit and Proper Person test****3.1 When considering an application for a permanent residential caravan site that is:**

- i. a first site licence,
- ii. a site licence renewal,
- iii. a site licence transfer, or
- iv. the appointment of site manager(s).

the local authority is required by the 1960 Act (as amended) to ensure, as far as reasonably practicable, that the relevant person(s) are fit and proper.

- 3.2** The matters the local authority must consider in reaching such a determination are set out in Section 32O of the 1960 Act (as amended).

These relate to:

- convictions involving fraud or other dishonesty, violence, drugs, firearms , or a sexual offence;
- the practice of unlawful discrimination on the grounds of any of the protected characteristics in Part 2 of the Equality Act 2010;
- contraventions of any provision of the laws relating to caravan sites, housing, or landlord and tenant law;
- breaches of an agreement to which the Mobile Homes Act 1983 applies; mis-selling of gas, electricity or water to site residents,
- engaging in antisocial behaviour, and/ or
- breaches of the conditions of a site licence issued under Part 1 or Part 1A of the 1960 Act.

Where an applicant for a site licence is unable to satisfy the local authority that they are fit and proper then the local authority cannot issue a licence. Similarly a site manager may not be appointed if they do not meet the fit and proper person's requirements.

#### **4.0 Determination of a Licence**

- 4.1** Properly received applications, i.e. applications made on the correct application form, accompanied by the relevant fee and containing all required information will be subject to checking by Environmental Health, including the fit and proper person declarations made by the applicant and site manager.

- 4.1.1** Where there are no identified matters of concern, the application will be granted under the Scheme of Delegation by the Director Education, Communities & Economy, Dr Mary Smith. Caravan Site Licences will include operating conditions based on the current Scottish Government model standards.

- 4.1.2** Where there is information to suggest that there are matters of concern the application will be referred to General Purposes Committee for a determination hearing. The applicant will be informed that they have a right of representation and that those representations will be considered by the Committee.

- 4.1.3** Where the three month determination period does not align with a scheduled General Purposes Committee Meeting the provisions in the Standing Orders for a special meeting can be invoked.

- 4.2** The proposed procedure for determining licences is appended at Appendix 1 of this report. As reported in the Cabinet Paper considered on 15 January 2019 a decision to refuse a licence application, or to revoke an existing licence, introduces further considerations for the local authority as such action does not result in the closure of a site.

**4.3** Revocation of a Licence

The Act, as amended, provides legislative powers for the local authority to revoke a licence should the licence holder or the site manager no longer meet the fit and proper person criteria.

## **5.0 Report Implications**

### **5.1 Resources**

**5.1.1** The new licensing regime and enhanced enforcement powers are welcomed for providing better protection for residents but they also increase the regulatory burden on Environmental Health. The period until licences are approved will require the diversion of Environmental Health resources away from existing duties.

**5.1.2** Environmental Health are a multi-disciplinary function carrying out a broad range of regulatory duties and there will be extra pressure on the Food and Safety Team during the processing of licence applications.

Four site applications will have to be considered and decided on within the statutory time limit of 3 months including bringing all relevant applications to the General Purposes Committee. Whilst significant work has already been undertaken in preparation this extra requirement will require diversion of staff from other statutory work which will have a significant effect on higher risk work during the first two quarters of 2019/20. Certain elements of the team's duties include health and safety inspection campaigns and lower risk food and safety work are already being curtailed or not completed due to the reduction in staff.

**5.1.3** No funding was provided for the implementation of the licensing regime, however, the 1960 Act (as amended) allows the local authority to make a charge to cover the reasonable costs of administering the regime i.e. the work involved in assessing licence applications, issuing licences and the costs involved with carrying out enforcement action. Members approved the fee setting report at the Cabinet Meeting of 15 January 2019.

### **5.2 Risk**

The 1960 Act (as amended) places a duty on the local authority to licence residential caravan sites. Failure to implement and enforce the Act and associated regulations leaves the local authority open to the challenge of failing in its statutory duty.

### **5.3 Single Midlothian Plan and Business Transformation**

Themes addressed in this report:

- ☒ Community safety
- ☒ Adult health, care and housing
- ☐ Getting it right for every Midlothian child
- ☐ Improving opportunities in Midlothian
- ☐ Sustainable growth
- ☐ Business transformation and Best Value
- ☐ None of the above

### **5.4 Key Priorities within the Single Midlothian Plan**

The introduction of a fit and proper person test to the licensing regime contributes to the key priority of Community Safety by increasing the accountability of site operators. The sanctions available to the local authority, should help protect the health, safety and welfare of site residents.

### **5.5 Impact on Performance and Outcomes**

There will be significant short to medium term effects on the performance of other aspects of Environmental Health work during the implementation of the regime.

**5.6 Adopting a Preventative Approach**

The introduction of the fit and proper person test as part of the licence application is intended to prevent rogue site operators taking over sites or exploiting residents, who are often vulnerable members of the community.

**5.7 Involving Communities and Other Stakeholders**

The licensing scheme was developed over several years following a number of consultations undertaken by the Scottish Government with site residents, site operators and local authorities. Locally site operators are aware of the deadline of 01 May 2019 to submit applications. As part of the assessment of applications, concerns previously raised by site residents, other regulators and organisations can be considered.

**5.8 Ensuring Equalities**

The EQiA undertaken for this matter shows there are no identified negative equality issues arising from this report.

**5.9 Supporting Sustainable Development**

Not relevant to this report.

**5.10 IT Issues**

There are no identified IT implications arising from this report.

**6.0 It is recommended that the General Purposes Committee:**

- i) notes the amendments to the Caravan Sites and Control of Development Act 1960 which introduce a requirement for fit and proper person assessments as part of the new licensing and enforcement regime for residential caravan sites with permanent residents;
- ii) approves the appended policy and procedure for the determination of Applications as contained at Appendix 1, and
- iii) remits the paper to Council for noting.

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**Background Papers:**

Guidance to Local Authorities on the Licensing system for Mobile Home sites with permanent residents; Scottish Government April 2017

Licensing of Permanent Relevant Sites (Scotland) Regulations 2016

Caravan Sites and Control of Development Act 1960 (as amended)

## **Appendix 1**

### **Policy and Procedure for the Administration of Licences and Licence Applications made under the Caravan Sites and Control of Development Act 1960 (as amended) for Permanent Residential Caravan Sites.**

#### **1.0 Purpose**

The purpose of this procedure is to outline Midlothian Council's policy, as the licensing authority under the above legislation, for dealing with the administration of licences for Permanent Residential Caravan Sites licences.

#### **2.0 Extent**

The policy applies to any application for a Permanent Residential Caravan Site Licence and deals with all "relevant persons" as defined in the 1960 Act. Relevant persons are defined in the Act as;

- applicants for a licence or licence transfer,
- licence holders,
- proposed or existing site managers, and
- any other persons the local authority considers relevant.

#### **3.0 Policy**

**3.1** It is the policy of the Midlothian Council that applications for a licence can only be considered as valid applications if:

- i. they are made on the required application form,
- ii. accompanied by the appropriate fee; and
- iii. contain any required documentation, including evidence that the applicant is entitled to the benefit of planning permission for the use of the land as a relevant permanent caravan site.

**3.2** The Council will acknowledge receipt and acceptance, or otherwise of the application within 14 days and where accepted will determine applications within 3 months of the date of receipt (with the exceptions detailed at paragraph 5 below).

Failure to determine a relevant permanent site licence application within 3 months of receipt results in the application being automatically approved in that the authority is to be treated as having issued a Part 1A site licence on the day by which the authority was required to determine the application, and the relevant person is, for all purposes, to be treated as having been issued a Part1A site licence by the local authority.

**3.3** Where the occupier of the land for which the application is being made does not have the benefit of relevant planning permission the Council will refuse to accept the application as required by the legislation.

**3.4** In the event that the Council determines that a licence cannot be issued the fee will not be returned.

## **4 Fit and Proper Test**

- 4.1** The matters that the Council will have regard to when conducting fit and proper person assessments are those set out in Section 32O of the 1960 Act (as amended).

These relate to:

- convictions involving fraud or other dishonesty, violence, drugs, firearms , or a sexual offence;
- unlawful discrimination on the grounds of any of the protected characteristics in Part 2 of the Equality Act 2010 (c.15);
- contraventions of any provision of the laws relating to caravans sites, housing, or landlord and tenant law;
- breaches of an agreement to which the Mobile Homes Act 1983 applies;
- mis-selling of gas, electricity or water to site residents,
- engaging in antisocial behaviour, and/ or
- breached the conditions of a site licence issued under Part 1 or Part 1A of this Act.

- 4.1.1** The local authority must also consider other material to fall within the assessment if it:

- i. relates to evidence that a relevant person has failed to provide information, or accurate information, which that person is required to give to the local authority, in accordance with this Part;
- ii. relates to a complaint made by a person of which the local authority is aware about antisocial behaviour within the meaning of section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) ( the 2004 Act) on the relevant permanent site;
- iii. is material of which the local authority is aware of as a result of any other function carried out by the authority and it appears to the authority to be relevant to the question of whether the person is a fit and proper person; or;
- iv. is material provided by another local authority.

Material which shows that a person has a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974 must not be considered.

- 4.2** It is the policy of the Council to require relevant persons, to sign a declaration confirming whether or not that relevant person has;

- (a) been convicted of an offence—

- (i) involving fraud or other dishonesty,
- (ii) involving violence,
- (iii) involving drugs,
- (iv) involving firearms,
- (v) which is a sexual offence within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c.46);

- (b) practised unlawful discrimination on the grounds of any of the protected characteristics in Part 2 of the Equality Act 2010 (c.15);

- (c) contravened any provision of—
- (i) the law relating to caravans,
  - (ii) the law relating to housing,
  - (iii) landlord and tenant law;

- (d) committed a breach of an agreement to which the Mobile Homes Act 1983 applies;

- (e) contravened a direction made under section 37 of the Gas Act 1986 (c.44) (maximum prices for reselling gas);

- (f) contravened a direction made under section 44 of the Electricity Act 1989 (c.29) (maximum prices for reselling electricity);
- (g) contravened a charges scheme made under section 29A of the Water Industry (Scotland) Act 2002 (asp 3) (charges schemes) as it applied to the person by virtue of section 30(1) of that Act (maximum charges for services provided with help of Scottish Water);
- (h) engaged in antisocial behaviour within the meaning of section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8);
- (i) breached the conditions of a site licence issued under Part 1 or Part 1A of the 1960 Act.

**4.3 For a first site licence application the fit and proper person test will be applied to:**

- (a) the applicant;
- (b) if the applicant is not an individual (e.g. a company, partnership or a charity), the test is applied to the person who holds the most senior position within the management structure of the body applying for a licence (for example, the Chief Executive of a company);
- (c) any person to be appointed by the applicant to manage the site; and if the person to be appointed to manage the site is not an individual then the test is also applied to any individual who is to be directly concerned with the management of the site on behalf of that manager.

**4.4 For a licence renewal application the fit and proper person test is applied to:**

- (a) the applicant;
- (b) if the applicant is not an individual (e.g. a company, partnership or a charity), then the test will be applied to the person who holds the most senior position within the management structure of the body applying for a licence (for example, the Chief Executive of a company);
- (c) any person appointed or to be appointed by the applicant to manage the site; and
- (d) if the person appointed or to be appointed to manage the site is not an individual then the test is also applied to any individual who is, or is to be, directly concerned with the management of the site on behalf of that manager.

**4.5 For a licence transfer application the fit and proper person test is applied to:**

- (a) the transferee, i.e. the person to whom the licence would be transferred if the application is successful;
- (b) if the transferee is not an individual (e.g. a company, partnership, or a charity), then the test is also applied to the person who holds the most senior position within the management structure of the body applying for a licence (for example, the Chief Executive of a company);

- (c) any person to be appointed by the transferee to manage the site; if the person to be appointed to manage the site is not an individual then the test is also applied to any individual who is to be directly concerned with the management of the site.

**4.6** For the **transmission of a licence (where the licence holder dies and the site is inherited)** the local authority is not required to carry out a fit and proper person assessment test before a licence is transmitted. However under section 32L of the 1960 Act the local authority may run the fit and proper person test on the new licence holder once it is transmitted and it could choose to do this if it had concerns that the new holder is not a fit and proper person to hold a licence.

**4.7** The local authority may also review an existing licence if information becomes available that a relevant person no longer meets the fit and proper person criteria

## **5.0 Processing licence applications**

**5.1** On receipt of an application Environmental Health will check that it:

- i) is fully completed,
- ii) is accompanied by the appropriate fee, and
- iii) contains all required paperwork, including evidence of permanent planning permission.

Incomplete applications or those without the appropriate fee will not be accepted and will be returned to the applicant for amendment.

**5.2** Environmental Health will check the validity of the planning permission for the land for which the licence application is being made.

**5.3** If the site in question benefits from appropriate permanent planning permission Environmental Health will then make reasonable inquiry with relevant Midlothian Council Services to check on the veracity of the information relating to the fit and proper person declarations. Such inquiry to include the Community Safety Function and the Trading Standards Service and may be made to other services, regulators and local authorities.

In certain circumstance Midlothian Council may require a 'relevant person' to provide a criminal conviction certificate (within the meaning of section 112 of the Police Act 1997 (c.50)). The certificate can only be required if the Authority has reasonable grounds to suspect that the information provided in the application in relation to convictions for fraud or other dishonesty, violence, drugs, firearms or sexual offence is, or has become, inaccurate

**5.4** Where planning permission is in order and where inquiry reveals no matters of concern in relation to the fit and proper person assessment for the relevant persons, the law states that the licence shall be issued or the appointment of a site manager approved. This will take place under the Scheme of Delegation by the Director Education, Communities & Economy, Dr Mary Smith.

A caravan site licence will include the appropriate site licence conditions based on the current Scottish Government model standards and/.

**5.5** Where inquiries reveal matters of concern which suggest that a relevant person is not fit and proper to be a licence holder or site manager, or where an adverse Criminal Conviction certificate is received and refusal of the application is being considered the matter will be brought before the General Purposes Committee for a determination hearing.



**5.5.1** In such cases the local authority will give written notice to the applicant that:

- the local authority is considering refusing the application;
- give the reason(s) the local authority is considering refusal;
- inform the applicant that they have a right to make written representations.

**5.5.2** The local authority will give the applicant 6 weeks from the date of the notice in which to submit any representations they wish to make (or indicate that they have no representations to make). Whilst written representations are awaited the time limit for determination of licence applications will be suspended.

**5.5.3** If an applicant makes representations (for example by sending in further information or arguments) the local authority must consider them.

The application and any written representations will be determined at a hearing of the General Purposes Committee.

**5.5.4** The procedure for the hearing is listed at Annex A of this report.

## **6.0 Revocation of licences**

**6.1** The 1960 Act (as amended) allows for the revocation of a site licence. This is a very serious step and one that the Midlothian Council will only consider as a last resort. Under section 32L of the 1960 Act the local authority will only revoke a licence if it is satisfied that:

- a) the licence holder being an individual or an organisation is not, or is no longer, a fit and proper person to hold a site licence;
- b) any person, or any person directly concerned with the management of the site, appointed by the licence holder to manage the site is not, or is no longer, a fit and proper person to do so.

**6.2** In considering revoking a licence the local authority will examine:

- any enforcement action taken;
- the seriousness of any breaches of licence conditions;
- the site licence holder, or site manager's, behaviour on a site, including any reports of threatening or intimidating behaviour to residents, local authority officers, or others; and,
- persistent failures to address site licence conditions breaches, or to co-operate with local authority officers investigating such breaches.

Where the local authority is considering revoking a licence it will serve a Notice on the licence holder stating that:

- the local authority is considering revoking the licence;
- give the reason(s) the local authority is considering revocation;
- inform the licence holder that they have a right to make written representations.

**6.3** The local authority will give the licence holders 6 weeks from the date of the notice in which to submit any representations they wish to make (or indicate that they have no representations to make).

- 6.4** If a licence holder makes representations (for example by sending in further information or arguments) the local authority must consider them.

Written representations will be determined at a hearing of the Midlothian Council General Purposes Committee. If such a Hearing is required the procedure listed at Annex A will be followed.

- 6.5** Revoking a licence does not result in closure of the site and could potentially leave a site without anyone to manage it. This could be detrimental to the interests of residents. The new licensing regime allows for the appointment of an interim manager to run the site in the short to medium term, while the future of the site was established after revocation or if no one was managing a site.
- 6.6** As such an appointment gives a person the power to oversee someone else's property an interim manager is appointed by a sheriff, on application from a local authority. A sheriff will consider the local authority's application and decide whether an interim manager should be appointed, and if so the terms of their appointment.

Under section 32Y of the 1960 Act a sheriff can only appoint an interim manager if:

- the local authority has refused to renew a site licence;
  - the authority has revoked a site licence;
  - the sheriff is satisfied that the licence holder is failing or has failed, either seriously or repeatedly, to comply with a site licence condition;
  - the sheriff is satisfied that the site is not being managed by a person who is a fit and proper person to manage a site; or
  - the sheriff is satisfied that no one is managing the site.
- 6.7** In addition to considering carefully whether asking a sheriff to appoint an interim manager is appropriate, a local authority should take time to identify who they want to appoint as an interim manager. This person should have the relevant skills and experience to manage a site, and be trustworthy and competent. It will be for a local authority to identify the right person or organisation, but possible interim managers could include former site owners or site managers with a good track record of running a site; business administrators with experience of the mobile home sector; or specialist businesses involved in the running and maintenance of sites.
- 6.8** The sheriff will hear the application from the local authority, and decide whether or not to appoint an interim manager. Under the 2016 Regulations a sheriff can only appoint an interim manager if the sheriff "is satisfied that the proposed interim manager has the relevant skills and experience to manage the site."

## **7.0 Information sharing**

Midlothian Council may provide information to, or obtain from, any other local authority or appropriate organisation, if it considers that it is likely to be relevant to a decision as to whether or not a person is fit and proper and it ought to be provided for that purpose.

## **8.0 Spent convictions**

Midlothian Council will not consider material which shows that a person has a conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974 (c.53) when making a fit and proper person assessment.

## **9.0 Deliberately provided false or misleading information**

Where a relevant person has deliberately provided false or misleading information in connection with their first site licence application, any renewal or transfer request or in connection with the appointment of site managers or other changes, it is the policy of Midlothian Council to report the offence to the Procurator Fiscal.

## **Annex A**

### **Disposal by Hearing of Consideration of Applications and Licences relating to Permanent Residential Caravan Sites**

The Procedure for considering applications and licences at hearings is as follows:

**1.0** The relevant person (Applicant, licence holder or site manager) will have been informed by Notice that:

- a licence application is likely to be refused,
- a site manager appointment opposed, or
- a licence revoked

The reasons why this course of action is being considered will be provided.

The Notice will have invited representations to be made by the relevant persons in relation to this intention. The Notice will have allowed 6 weeks for written representations to be made.

The Applicant will be invited, giving a minimum of 7 days' notice, to a hearing before the General Purposes Committee at date / time, location specified.

**2.0** At the General Purposes Committee Hearing:

1. The Chair invites the person or persons who have made representations about the application to address the Committee. The officer/other persons who have lodged representations (if this is permitted in terms of the legislation) will summarise the terms of the report. The report will have been circulated to the applicant and Elected Members in advance of the meeting.
2. The applicant is given the opportunity to question the officers etc.
3. The Members are given the opportunity to question the officer etc.
4. The Chair invites the applicant to address the Committee in support of the application.
5. The officer etc is given the opportunity to question the applicant.
6. The Elected Members are given the opportunity to question the applicant.
7. Both parties are given the opportunity to sum-up.
8. The Committee takes a decision in the presence of the applicant and officers/other persons who have made representations. The reasons for making the decision should be explained when conveying the decision.

**3.0** Having considered the evidence a balanced conclusion requires to be reached as to whether the person poses any risk as a relevant person.

The decision should be based on evidence which must be as sound as possible.

The decision as to whether someone is fit and proper is a judgement.

Assessment should be made of the risk that the relevant person may fail to act properly in relation to the operation of the caravan site and whether/to what extent, any problems from the past are likely to recur.

Members should be aware that the licence can be subject to a further review at any time should fit and proper person concerns come to light.

#### **4.0 Determination Options**

Members may:

- i) Grant the application for a licence with conditions;
- ii) Refuse the application for a licence; only if there is no relevant planning permission or if there is information to demonstrate the applicant is not a fit and proper person;
- iii) Refuse the appointment of a proposed site manager if there is information to demonstrate the applicant is not a fit and proper person; or
- iv) Revoke an existing licence.

Where an application is refused or licence revoked the Committee will give its reasons on the same day it tells the applicant or licence holder of its decision.

#### **5.0 Appeal**

The relevant person may by summary application at Edinburgh Sheriff Court appeal the decision taken by the Council. Any such appeal must be made within 28 days of the decision.