

PERTH AND KINROSS COUNCIL

Licensing Committee

11 July 2019

New Licensing requirements for Mobile Home Sites with Permanent Residents

Report by Depute Director (Housing & Environment) (Report No. 19/203)

PURPOSE OF REPORT

The purpose of this report is to make the committee aware of the new licensing requirements for mobile home sites with permanent residents and request approval of the arrangements for the assessment, charging and administration of this licensing scheme in accordance with the Licensing of Relevant Permanent Sites (Scotland) Regulations 2016.

1 BACKGROUND / MAIN ISSUES

- 1.1 It is a referred function of this Committee in terms of Section 9 of the Scheme of Administration to:-
- “(a) Determine applications for licences, permits and registrations in terms of the Caravan Site and Control of Development Act 1960 and all related subordinate legislation and to exercise discretion in terms of any condition attached to such licences, permits or registrations where the approval of the Council as Licensing Authority is required.
 - (b) Set fees and charges for the Caravan Site and Control of Development Act.”
- 1.2 The Executive Director (Housing and Environment) also has delegated powers in terms of Section 23 of the Council’s Scheme of Administration to “grant conditionally or otherwise, refuse or suspend where legally appropriate, and to designate officers to grant conditionally or otherwise, refuse or suspend where legally appropriate, licences, registrations, recognitions or approvals in terms of the Caravan Sites and Control of Development Act 1960”.
- 1.3 Regulatory Services within Housing and Environment, carry out the delegated functions under the Caravan Sites and Control of Development Act 1960 on behalf of the Executive Director (Housing and Environment) and prior to the introduction of this new licensing scheme, mobile homes for permanent residence were licensed under a general caravan site licence. This was often as part of a wider site that may also comprise touring/holiday caravans and with no requirements for the caravan site licence to be renewed. Once granted, there were limited powers to address any failure to comply with conditions of the caravan site licence, except through reporting matters for prosecution.

- 1.4 The Housing (Scotland) Act 2014 introduced a new licensing scheme on 1 May 2017 for residential mobile homes sites by inserting new provisions into the Caravan Sites & Control of Development Act 1960. To support the operation of the new licensing regime the Licensing of Relevant Permanent Sites (Scotland) Regulations 2016 were also enacted. The new scheme relates to permanent residential sites only and should be a positive change in protecting the safety and welfare of residents on these sites as it introduces wider powers for Local Authorities to deal with breaches of site conditions. The licence provisions came into effect from May this year.
- 1.5 The main changes to the licensing of residential caravan sites can be summarised as follows:-
- (a) Licences granted last for 5 years and must be renewed,
 - (b) Applications for licences and for transfers and renewal of licences can be refused if the applicant or any person involved with the day to day management of the site (including a site manager appointed by the site owner to manage the site) is found not to be a fit and proper person to hold a site licence,
 - (c) A site licence can be revoked if the applicant or any person involved with the day to day management of the site (including a site manager appointed by the site owner to manage the site) is found not to be a fit and proper person to hold a site licence,
 - (d) The Council is entitled to charge fees for the first application for a site licence and for a renewal of a site licence,
 - (e) The Council can reclaim the expenses of enforcement action,
 - (f) The Council has a number of options in relation to enforcement. These are:-
 - (i) the power to serve an improvement notice on a site owner, to require them to carry out work to comply with a licence condition;
 - (ii) the power to impose a penalty notice which would suspend pitch fee payments (other than for utilities) and the commission a resident pays to the site owner on the sale of their mobile home, if the site owner failed to comply with an improvement notice;
 - (iii) the power to revoke a site licence in certain circumstances;
 - (iv) making provision for an interim manager to take over the running of the site in specific circumstances, such as when a site licence is revoked, or a local authority has refused to renew a licence;

- (v) the power to carry out work on a site urgently (whether or not that site has a licence) when the licence holder is failing, or has failed, to comply with a site licence condition, or if the site has no licence; and as a result of that failure there is an imminent risk of serious harm to the health or safety of any person who is or may be on the land; and
 - (vi) increasing the maximum criminal penalty for the offences of non-compliance with licence conditions to a maximum of £10,000. The fine for operating without a site licence once the new system is in force will be a maximum of £50,000. It will be for a sheriff to decide if a licence holder has failed to comply with a licence condition or has been operating a site without a licence, and how much any fine should be.
- (g) Applications for residential site licences will be received and processed and referred to this Committee. The legislation is clear that decisions in relation to residential caravan sites can be delegated to officers. The Committee has three months to make its decision on an application. If the Executive Director is minded to recommend refusal of an application then the applicant must be advised of the reason(s). The applicant then has 28 days to make written representations. The Committee must consider these representations from the applicant before it makes its final decision. If the Committee refuses a site licence application, an applicant can appeal against that decision. A sheriff will hear the appeal. If the Committee is considering revoking a site licence then the same process applies.
- (h) The Scottish Ministers have the power to issue guidance. A local authority must have regard to any guidance published when carrying out its functions under the 1960 Act. See Section 6, Background Papers.
- 1.6 There is no requirement in the 1960 Act that decisions on mobile home licensing be carried out by committee such as the licensing committee as there is for some other licensing regimes, the duty falls on the local authority to decide how it will handle and make decisions in relation to a site licence.
- 1.7 Fifty-eight caravan sites currently hold caravan site licences within Perth & Kinross. Of these sites, thirteen have been identified as partly or wholly comprising of mobile homes with permanent residents and therefore require the new Mobile Residential Home Licence. (A list of these sites is contained in Appendix 1.)
- 1.8 Guidance has been published for local authorities on site licence conditions which provides model licensing conditions for residential mobile home site licences. See section 6, Background Papers.

- 1.9 Under the new licensing system a local authority is also able to charge a fee for handling a first site licence application, and for a licence renewal. It cannot charge a fee for handling a site licence transfer application, or for transmission of a site licence. The fee must not exceed an amount which a local authority considers represents the reasonable costs of an authority in deciding a relevant permanent site application. The fee set should therefore reflect what the local authority believes will be the reasonable cost of handling a first site licence application, and the average cost to it of handling a site licence renewal application.

2 PROPOSALS

Determination of Mobile Residential Home Licences

- 2.1 It is proposed that in the majority of cases applications for licences, where there is no reason for refusal, will continue to have their licences granted by the Executive Director (Housing and Environment) and that all other licenses will be referred to the Licensing Committee to consider whether the applicants are “Fit and Proper” to hold a licence (Appendix 3, Fit and Proper Person Assessment). By referring these applications to the Licensing Committee members of the public will be given an opportunity to have a fair and public hearing before an independent and impartial tribunal in accordance with Article 6 of the European Convention of Human Rights.

Licensing Conditions

- 2.2 In order to ensure all sites are assessed consistently it is considered a robust approach is used to apply licence conditions based on the relevant legislation and associated guidance (see Section 6, Background Papers,).
- 2.3 The proposed, generic licence conditions are detailed in Appendix 2 and Committee members are asked to agree the application of these conditions by the Executive Director (Housing and Environment) in terms of the licensing regime. Note: Further bespoke conditions may apply to certain sites based on historical information, types of services etc.

3 COST RECOVERY

- 3.1 There is no funding provided for implementation of this legislation. The direction is for local authorities to charge fees to cover the costs of increased resource and administrative burden of the licence process, primarily on Regulatory Services (predicted to amount to 0.6 FTE in 19/20). It is envisaged that all sites will be licenced within a 6 month period and additional resource required to do so will be funded from the licensing income, therefore cost neutral in terms of existing budgets.
- 3.2 Local authorities can also recover costs of additional enforcement action which may be required at other times.

- 3.3 The details of the proposed fees to be charged in Perth and Kinross are detailed in Appendix 4. These aim to ensure those operating sites as a business, cover appropriate costs. Comparative charges of other Local Authorities are found in Appendix 5. The fees will be subsequently included within the Council's Schedule of Charges.
- 3.4 Note: A site owner can pass on the cost of the licence fee to site residents as part of their pitch fee, as it is a legitimate business expense and the licensing system will benefit residents. A licence holder can choose whether or not the cost is divided over the length of the licence period (5 years) or over 1 year. However these costs should not be a significant burden on residents.
- 3.5 The Licensing Committee is asked to approve the charges laid out in Appendix 4 for inclusion to the Council's Scheme of Charges.

4 CONCLUSION AND RECOMMENDATIONS

- 4.1 The changes which have been made to regulate and licence mobile home sites with permanent residents are welcomed, to protect the safety and welfare of residents on these sites, It is requested the Licensing Committee:
- (a) Note the new licensing requirements for mobile homes with permanent residents and the proposed licensing process which includes additional financial and resource pressures;
 - (b) Approve that the Executive Director (Housing & Environment) lead on the licensing of mobile home sites with permanent residents.
 - (c) Approve the Licensing Conditions detailed in Appendix 2 of this report;
 - (d) Agrees the Licensing Committee determine 'Fit & Proper Person Test' applications, as detailed in section 2.1 and Appendix 3 of this report;
 - (e) Approves the licence fees for the Scheme of Charges detailed in Appendix 4 of this report.

Authors

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Approved

Name	Designation	Date
Keith McNamara	Depute Director (Housing & Environment)	3 June 2019

1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION.

Strategic Implications	Yes / None
Community Plan	Yes
Corporate Plan	Yes
Resource Implications	Yes
Financial	Yes
Workforce	Yes
Asset Management (land, property, IST)	None
Assessments	-
Equality Impact Assessment	Yes
Strategic Environmental Assessment	None
Sustainability (community, economic, environmental)	None
Legal and Governance	Yes
Risk	None
Consultation	-
Internal	Yes
External	Yes
Communication	Yes
Communications Plan	Yes

1 Strategic Implications

Community Plan

1.1 The proposals detailed within this report support each of the following priorities:

- (i) Giving every child the best start in life –
Increasing the safety of mobile home sites with permanent residents will support children living there to have a better start in life;
- (ii) Supporting people to lead independent, healthy and active lives –
This proposal will aid in supporting specific community's needs which may not have had any in the past.
- (iii) Creating a safe and sustainable place for future generations –
This proposal contributes to building safer, stronger and sustainable communities by licensing, of a regulatory process, sites and site managers/owners by application.

Corporate Plan

1.2 The proposals detailed within this report support each of the following priorities:

- (i) Giving every child the best start in life:-
The proposal allows PKC to ensure adequate living standards to support children living on a mobile home site, where previously the Local Authority had limited power.
- (ii) Supporting people to lead independent, healthy and active lives; -

The proposal includes new model standards and site specifications which encourage quality housing for permanent residents (in mobile homes) - aids in meeting the housing needs of people in Perth and Kinross.

- (iii) Creating a safe and sustainable place for future generations.-
The Fit and Proper Persons Test promotes and encourages safety for those permanent residents living on mobile sites.

2. Resource Implications

Financial

- 2.1 There is a cost to Perth and Kinross Council for issuing site licences which will be retrieved through our proposed fee structure. The Head of Finance has been consulted regarding the fee structure for inclusion in the Scheme of Charges.

Workforce

- 2.2 Staffing requirements will be met from within existing resources and will be allocated in line with other public health priorities. A combination of authorised officers will be utilised to administrate, inspect/assess and issue the Mobile Residential Home Licence for Permanent Residents. The hourly rate in determining the fee structure has therefore been determined from the current 2019/20 salary scales applicable to the relevant authorised officer posts noted above.

Asset Management (land, property, IT)

- 2.3 There are no asset management implications associated with this report.

3 Assessments

Equality Impact Assessment

- 3.1 This report recognises that the new procedure for licensing residential caravan sites could impact site owners/managers or site residents. However, the proposals have been considered under the Corporate Equalities Impact Assessment process (EqIA) with the following outcome:
- 3.2 Assessed as **relevant** for the purposes of EqIA, due to:
 - The introduction of an appeal process allows an applicant a trial if they do not agree with the outcome of their application; and
 - The new regime should protect residents and have an overall positive impact

Strategic Environmental Assessment

- 3.3 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals.

- 3.4 A pre-screening report has been completed. This confirmed that the licensing of mobile home sites with permanent residents will have minimal or no impact on the environment, and consequently that a full strategic environmental assessment did not need to be undertaken.

Sustainability

- 3.5 There are no sustainable development issues associated directly with this report.

Legal and Governance

- 3.6 Following statutory amendments to the Caravan Site and Control of Development Act 1960 (the Act), the new system for licensing and controlling mobile home sites with permanent resident has been introduced under the Licensing of Relevant Permanent Sites (Scotland) Regulations 2016. The design of the licensing application; the selection of Fit and Proper Person consultees and criteria have been carried out in accordance with Part 5 of the Housing (Scotland) Act 2014; The Licensing of Relevant Permanent Sites (Scotland) Regulations 2016 and any associated guidance.
- 3.7 The Scheme of Administration, under section 9, Licensing Committee, states that this Committee has delegated authority to:
- Determine applications for licences, permits and registrations in terms of the following Acts and all related subordinate legislation and to exercise discretion in terms of any condition attached to such licences, permits or registrations where the approval of the Council as Licensing Authority is required (includes Caravan Site and Control of Development Act 1960)
 - Set fees and charges for those licences, registrations and permits referred to above.

Risk

- 3.8 There are no risks associated with the content of the report.

4. Consultation

Internal

- 4.1 The Head of Legal and Governance has been consulted on the preparation of this report.
- 4.2 Consultation has also been undertaken with internal consultees as part of the Fit and Proper Persons Test. This includes: Development Control, Safer Communities Team, Licensing and Waste.

External

- 4.3 The Scottish Government have been formally consulting with stakeholders on the proposal of mobile homes with permanent residents site licensing since 2012.
- 4.4 Relevant Partner Agencies have been consulted to ensure they will be available to make comment on applicants Fit and Proper Persons Test and have been made aware of relevant criteria which require comment.

5. Communication

- 5.1 Perth and Kinross Council have communicated with the 13 mobile home sites with permanent residents which will be required to apply for a new licence. Notification of the new licence requirements timelines have also been communicated to ensure sites are kept informed of Perth and Kinross Council's status.
- 5.2 Various site owners/managers and residents have been in regular contact with members of Regulatory Services at Perth and Kinross Council with any enquiries or complaints they may have.
- 5.3 Perth and Kinross Council have liaised with Partner Agencies who will be consulted during the 'Fit and Proper Person Test' to provide relevant comment on applicants. Partner agencies have provided a suitable future point of contact to do so.

6 BACKGROUND PAPERS

- 6.1 The background papers are:
 - Licensing System For Mobile Home Sites With Permanent Residents: guidance for local authorities
<https://www.gov.scot/publications/guidance-local-authorities-licensing-system-mobile-homes-sites-permanent-residents/>
 - Mobile Homes: model standards for residential site licenses
<https://www.gov.scot/publications/model-standards-residential-mobile-home-site-licences/>

7. APPENDICES

Appendix 1 – Mobile Home Sites with Permanent Residents in Perth
 Appendix 2 – Mobile Homes with Permanent Residents Site Licence Conditions
 Appendix 3 – Procedure for Handling Fit and Proper Person Test
 Appendix 4 – Proposed Fees for Scheme of Charges
 Appendix 5 – Comparison of Costs for First Licence Application