

REPORT TO: LICENSING & COMMUNITY SAFETY COMMITTEE

Date: 14 January 2020

TOPIC: CARAVAN SITE LICENSING, FEES POLICY AND COMPLIANCE POLICY

REPORT BY: PUBLIC PROTECTION MANAGER

1 INTRODUCTION

- 1.1 North Devon Council is responsible for the licensing of caravan sites and sites used for camping. There are two main areas of caravan site licensing, those sites with residential caravans, commonly referred to as 'residential park home sites', and those with caravans sited for holiday purposes.
- 1.2 The legislation surrounding caravan sites allows the Council to impose a fee for those sites used for residential purposes only. The Council does not currently impose any fees for residential caravan site licences, and this does not allow the Council to adequately recover the associated costs of processing applications, issuing licences, and ongoing licence maintenance and administration.
- 1.3 The purpose of this report is to recommend approval of a new set of fees for residential caravan site licences, contained in a Fees Policy and to approve a Policy on the Licensing and Compliance of Residential Park Home Sites.
- 1.3 The Council is unable to charge any fees for the administration and enforcement of caravan sites operating for holiday purposes. Due to the tourist economy being substantial in the North Devon area, there are a large number of these sites across the district. At the same time as considering residential sites, it will therefore be prudent for Members to consider a strategy to standardise the level of administration and enforcement of these licences across the district.

2 RECOMMENDATIONS

- 2.1 That Licensing and Community Safety Committee:
 - 2.1.1 consider the draft Fees Policy for the Licensing of Residential Park Home Sites, contained in **Appendix A**, which proposes new fees to be implemented from February 2020. Associated calculations of these fees are contained as an appendix of this policy.
 - 2.2.2 consider the draft Policy on the Licensing and Compliance of Residential Park Home Sites contained in **Appendix B**.

- 2.2.3 instruct the Public Protection Manager to undertake a six week period of consultation on the above documents, and provide feedback on the results of the consultation exercise to a future committee meeting.
- 2.2.4 instruct the Public Protection Manager to undertake a scoping exercise in respect of non-residential sites. The exercise is proposed in order to ascertain an estimated number of sites across the district and formulate a strategy in terms of a suitable level of administration and enforcement. This is necessary given the lack of fee income surrounding this area of work, and associated risks to the Council posed through lack of enforcement.

3 REASONS FOR RECOMMENDATIONS

- 3.1 Despite legislative changes creating a position whereby fees may now be charged for licence applications and inspections associated with residential park home sites, the Council has no Fee Policy or fee structure in place. If fees are to be charged it is necessary for the Council to calculate its fees in line with the principles of best practice and to have in place a suitably robust Fees Policy (Section 10A, The Caravan Sites and Control of Development Act 1960).
- 3.2 It is necessary to clarify the Council's position with regards to site licence compliance. The draft Policy on the Licensing and Compliance of Residential Park Homes has been designed to support the Fees Policy. It sets out how compliance will be achieved and the process for the same, this in turn supports the levels of fees to be charged.
- 3.3 Due to the lack of associated fees for non-residential sites and the tourist economy being substantial in the North Devon area, there are a large number of sites across the district for which the Council receives no associated income stream. The Council has not inspected holiday caravan and camping sites, in the context of caravan site licensing, for a significant period. As such, the Council is now aware of a substantial number of unlicensed sites, and licences which contain out of date or unenforceable conditions, or for which ownership has changed etc., rendering licences invalid. As part of this piece of work it will be necessary for members to consider the level of enforcement appropriate to non-residential sites, given the risks posed to the Council through a lack of regulation.

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- 4.1 The Caravan Sites and Control of Development Act 1960 (as amended by the Mobile Homes Act 2013) (the Act), authorises local authorities to issue licences in respect of caravan sites. Whilst sites used for holiday purposes do not attract a fee, the Council may require applications for 'relevant protected sites' (more commonly referred to as residential park home sites licences) to be accompanied by a fee fixed by the authority. Fees may also be charged for applications to transfer site licences, to change conditions on site licences, and to deposit site rules with the authority. Furthermore, local authorities may charge for the administration and monitoring of site licences by levy of an annual fee. A summary of the pertinent legislation covering fees is contained at **Appendix C**.

- 4.2 There are no fees currently set for residential caravan site licences and therefore the Council has been significantly under-recovering fees from this licensed community. The Council currently has eight residential sites licensed across the district, with more than one caravan onsite. Sites range in size from approximately 22 to 107 units. The number of holiday sites across the district is more significant and due to the age of the licences, and lack of visits undertaken in recent years, data is currently unreliable in terms of their numbers.
- 4.3 The fees for caravan site licensing are 'locally set', meaning that fees are not prescribed by statute. The Council has yet to approve fees since April 2014 when the amendments to the Act became effective, and it is now necessary to ensure that the Council better recovers its costs. Locally set fees are a vital means of ensuring that costs can be recovered by local authorities rather than relying on a subsidy from local tax payers. Businesses that benefit from caravan site licences should be asked to pay any reasonable costs incurred by the local authority in providing that licence. However, they must also be able to depend on the local authority fees being fair and reasonable. The fees are payable by the site owners and are not to be passed onto residents.
- 4.4 When setting the fees, local authorities should have regard to 'The Mobile Homes Act 2013, A Guide for Local Authorities on Setting Site Licensing Fees' issued by the Department for Communities and Local Government; 'Open for Business: LGA Guidance on Locally Set Licence Fees'; the 'BEIS Guidance for Business on the Provision of Service Regulations'; and principles in the Regulators' Code which sets out the steps that must be taken to set fair and reasonable fees. These documents have been considered when formulating those fees recommended for approval and contained in **Appendix A**.
- 4.5 In December 2009 the Services Directive, Provision of Services Regulations 2009, made in compliance with Directive 2006/123/EC of the European Parliament, was introduced. Article 13(2) of the Directive states that any licence fees which applicants incur under a licensing scheme must be reasonable and proportionate to the cost of the 'authorisation procedures'. This means that councils may not make any profit from charging applicants for licence applications or from regulating individual licensing functions.
- 4.6 Fees should cover the costs or part of the costs incurred by a local authority under its functions in Part 1 of the Act, other than the costs of enforcement action, or any functions carried out under Section 23 or 24 of the Act (power of local authorities to prohibit caravans on commons or provide sites for caravans).
- 4.7 Under Section 9C of the Act an authority is entitled to recover its 'expenses' in deciding to and in the service of a Compliance Notice. This includes costs incurred in inspections, preparing the notice and obtaining expert advice on it and any interest the authority intends to charge. Similarly an authority can recover the costs in serving notices in respect of work in default and emergency works under Section 9F. The totality of costs or likely costs in investigating complaints, inspecting sites and other monitoring etc., can be included within the fee structure. However, once a decision has been taken to take formal enforcement action in a particular case by serving a notice, it can recover all of the actual costs that led to that decision being taken, including for example costs incurred in dealing with the complaint and inspections, or by serving a demand on the site owner with the relevant enforcement notice. The Fees Policy proposed at **Appendix A** encompasses these on an individual case basis.

- 4.8 There are a number of different options available to authorities in setting a fee structure, such as banding by risk or size of a flat rate charge, but it is important not to target individual sites because they require greater action in terms of enforcement.
- 4.9 The fees must be reasonable and proportionate to cover the cost of processing the procedures and formalities associated with the relevant licensing function, and they must accurately reflect the actual costs incurred by the Council. The Mobile Homes Act 2013, A Guide for Local Authorities on Setting Site Licensing Fees issued by the Department for Communities and Local Government (**Appendix D**) provides examples of the matters on which authorities are recommended to take account. These factors have been considered when calculating the proposed fees.
- 4.10 The above guidance (at paragraph 2.2) states that in assessing annual fees an authority will need to take account of their overall costs in respect of their licensing functions and/or base such fees on a “typical” site (or where banding typical within the category). The document also cites a number of different options available in setting a fee structure, such as banding by risk or size or a flat rate charge. Considering inspections of existing sites have not been undertaken for a significant period, the suggestion is to initially set a flat rate charge based upon a typical site, however this will be reviewed in moving forward and the potential to set a rate based on the number of pitches will be examined in more detail, once inspection times are better known.
- 4.11 Members should note that Section 8 of the Mobile Homes Act 2013 is yet to be effective, but empowers the Secretary of State to introduce a requirement for residential park home sites to be managed by a ‘fit and proper’ person. Section 8 sets out an overarching framework for the operation of the test and the processes that local authorities will use, and a register of fit and proper site managers.
- 4.12 A recent Government consultation exercise was undertaken in July 2019 to ascertain the current position and dependent upon the feedback received, a decision to implement the new test may take place. The consultation details that this will be undertaken no less than six months after the implementation date of any new requirement. The introduction of a fit and proper test will create an increased workload and thus the proposed fees and associated policies are likely to require a further review in due course, should this test come into effect.
- 4.13 The main cost associated with the fees calculated is in respect of officer time. Officer time includes direct and indirect costs. Direct costs include wages, pension contributions, National Insurance, etc. On-costs include the reasonable costs of providing heating and lighting in the office, general IT, photocopying, and other administrative services. They include business support such as Customer Services, Legal Services and HR. It is believed that using staff rates with on-costs is the fairest way to recoup these costs. Licence applications that take very little time will pay less and the more complex applications will pay more. Financial Services have advised on hourly rates of staff and these have been used in preparing the calculations.
- 4.14 The annual fee for a licence for a residential caravan site is payable on a fixed date each year, decided upon by the authority. This will be confirmed to licence holders.
- 4.15 It is worthwhile noting that a local authority cannot charge separately for its advice or work in advance of receipt of a caravan site licence application. However the guidance indicates that 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. Pre-application advice has been built into the proposed fee calculations.

4.16 There is a possibility to exempt certain types of site (see guidance at Section E: **Appendix D**) and in this instance it is not proposed to charge sites with a single residential caravan unit. The rationale for this exemption being that such sites are low risk; the fact they tend to be family run; rarely for business purposes, and rarely if ever are they subject of complaints. The costs of inspection in these instances are likely to be outweighed by the costs of administering charges.

Consultation

4.17 Consultation with the trade, the residents of caravan sites or any other body is not required in order to set the fees for residential sites. The power to set fees is contained in the Act and does not make reference to the need to consult prior to fee setting. Despite the above, and in consideration that the fees proposed are new, it is proposed that a six week consultation period is undertaken to gain any relevant feedback.

4 RESOURCE IMPLICATIONS

4.1 There is no additional workload associated with this report.

4.2 Additional income from those residential caravan sites currently licensed is expected should the proposed amendments to the fees be approved, albeit as per the provisions of the legislation and guidance, this will only allow for recovery of the Council's costs.

4.3 It is estimated that if the draft fees are approved, and the number of caravan sites licensed remains the same an additional £2,693.92 would be received from residential park home annual fees over the course of 2020. New applications would of course increase any income received albeit that few if any new residential caravan site applications are envisaged over a five year period.

6 CONSTITUTIONAL CONTEXT

Article or Appendix and paragraph	Referred or delegated power?	Key decision?
Part 3, Annex 1 (4)	Delegated	No

7 STATEMENT OF CONFIDENTIALITY

7.1 This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

8 BACKGROUND PAPERS

8.1 The following background papers were used in the preparation of this report:

- Caravan Sites and Control of Development Act 1960.
- Mobile Homes Act 2013.
- A Best Practice Guide for Local Authorities on Enforcement of the New Site Licensing Regime, Department for Communities and Local Government. March 2015.

- Mobile Homes a Fit and Proper Person Test for Park Home Sites Consultation, Ministry of Housing Communities and Local Government. July 2019.
- Department for Communities and Local Government, The Mobile Homes Act 2013, A Guide for Local Authorities on Setting Licence Fees. February 2014.
- LGA, Guidance on Locally Set Licence Fees, 2018.
- BEIS Guidance for Business on the Provision of Services Regulations. October 2009.

The background papers are available for inspection and kept by the author of the report.

9 STATEMENT OF INTERNAL ADVICE

- 9.1 The author (below) confirms that advice has been taken from all appropriate Councillors and officers.

Licensing and Community Safety Committee Chair: Cllr Frederick Tucker

Author: Katy Nicholls, Public Protection Manager

Date: 23/12/2019