

Report

Report to:	Community and Enterprise Resources Committee
Date of Meeting:	19 March 2019
Report by:	Executive Director (Community and Enterprise Resources)

Subject:	Licensing of Mobile Home Sites with Permanent Residents
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ inform of changes in licensing requirements for mobile home sites with permanent residents
- ◆ provide an overview of the new arrangements to be implemented in respect of licensing these sites and of new legislative powers available to local authorities in respect of such sites
- ◆ request approval of the proposed scheme of charges in relation to licensing these sites

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):

- (1) that the changes to the Licensing of Mobile Home Sites with Permanent Residents, as detailed in Appendix 1 to the report, be noted; and
- (2) that the scheme of charges for licence fees, detailed in Section 5.2 of the report, be approved.

3. Background

3.1. Part 5 of the Housing (Scotland) Act 2014 amended the Caravan Sites and Control of Development Act 1960 and on 1 May 2017 a new licensing system came into force in relation to Mobile Home Sites with permanent residents.

3.2. The new system puts in place a robust licensing system. The key measures of the new licensing system are:-

- it gives local authorities a range of powers and appropriate discretion in deciding how to use them, in relation to the granting, management and revocation of licences
- it introduces a 5 year licence period
- it introduces the requirement that a site holder (and anyone directly managing a site) is a fit and proper person
- it provides an effective process for site owners and licence applicants to appeal against decisions by the local authority specifically in relation to such licences and separate to the already existing appeal provisions for sites not covered by the new regime

- 3.3. The new system was passed by the Scottish Parliament following two public consultations and research in 2013 by Consumer Focus Scotland, who found that residents had experienced problems with maintenance, security or safety standards on sites and issues around intimidation, abusive behaviour, vandalism, violence or damage to property.
- 3.4. Regulations have been enacted to support the operation of the new licensing regime, these are 'The Licensing of Relevant Permanent Sites (Scotland) Regulations 2016'.
- 3.5. South Lanarkshire Council currently has 5 licensed residential or mixed residential/holiday sites under Part 1 of the Caravan Sites and Control of Development Act 1960 (the 1960 Act), see Appendix 2. These existing sites have until 1 May 2019 to begin the 'First Site Licence' application process for a relevant permanent site under the new scheme. Site operators will be aware of the changes through the consultation exercise undertaken by Scottish Government.
- 3.6. This amendment does not cover holiday sites, or parts of mixed residential/holiday/touring sites used only for holiday purposes. Non-residential sites or parts of sites will continue to be subject to current arrangements for all caravan sites, which, subject to a few exemptions, requires them to be licensed under Part 1 of the Caravan Sites and Control of Development Act 1960. These site licences were granted in perpetuity and were based around conditions issued by the Scottish Government under section 5(6) of the 1960 Act, to aid local authorities to issue a licence with suitable conditions. New 'Model Standards for Residential Mobile Home Site Licences' were issued by the Scottish Government in December 2018 and will be used as the basis for attaching suitable conditions to new Residential Site Licences.
- 3.7. The new licensing scheme is a statutory duty of the Council under the 1960 Act, as amended by Part 5 of the Housing (Scotland) Act 2014 and supplemented by the Licensing of Relevant Permanent Sites (Scotland) Regulations 2016. This duty is an addition to the existing licensing regime relating to caravan sites regulated by Environmental Services. Community and Enterprise Resources Scheme of Delegation currently authorises Fleet and Environmental Services personnel to discharge the Council's statutory duties in relation to housing, including mobile homes, and therefore this new regime will come within the scope of the existing authorisation.

4. Employee Implications

- 4.1. There are no employee implications arising directly from these new arrangements. They will be delivered utilising existing staff resources.

5. Financial Implications

- 5.1. The 1960 Act states that the fee "must not exceed an amount which it considers represents the reasonable costs of an authority in deciding a relevant permanent site application." The proposed fees have taken into account the provision of Regulation 6 of the Licensing of Relevant Permanent Sites (Scotland) Regulations 2016. Guidance has also been produced by the Scottish Government on the setting of such fees. This guidance was utilised to calculate the level of fees proposed in paragraph 5.2 below. The proposed scheme of charges is designed to ensure that the licence scheme will reflect the actual costs of administering the granting and renewal of licences by Environmental Services.

5.2. The Council proposes to charge £793.75 for a new (first) site licence and £531.25 for a renewal licence. The Committee is asked to approve this level of charging. This level of charging will thereafter be reviewed on an annual basis in line with the Council's charging policy.

6. Other Implications

6.1 A range of new enforcement powers have been introduced, primarily relating to a failure of the site licence holder to meet conditions placed on a site licence.

6.2 There are no implications for sustainability in terms of the information contained in this report.

7. Equality Impact Assessment and Consultation Arrangements

7.1. This report updates arrangements in relation to an existing function and therefore no impact assessment is required.

7.2. There is no requirement to undertake any consultation in terms of the information contained in this report. The legislation which introduced this change was subject to consultation and site operators would have had an opportunity to make representation on the new licensing scheme.

Michael McGlynn
Executive Director
(Community and Enterprise Resources)

22 February 2019

Link(s) to Council Values/Ambitions/Objectives

- Focused on people and their needs
- Accountable, effective, efficient and transparent
- Improve the availability, quality and access of housing
- Make communities safer, stronger and sustainable

Previous References

None

List of Background Papers

'Model Standards for Residential Mobile Home Site Licences', December 2018.

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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APPENDIX 1

The reformed licensing system sets out new processes and measures for:

- Issuing a new site licence;
- Renewing a site licence;
- Transferring a site licence;
- Enforcing the new licensing system;
- Revoking a site licence; and
- Emergency Action on a site.

Issuing a New Site Licence

In general terms the initial application process for the new system broadly follows that of the previous one, in that the applicant, who must be the occupier of the land, will be required to submit an application in writing, containing information prescribed in the 1960 Act and specifying the land in respect of which the application is being made. It must be established that planning permission for use as a relevant permanent site is in place before a decision is made to grant a licence. A standard application form will be provided to applicants for this purpose.

Additional information now required under the new system includes:

Any information relevant to the fit and proper person test, which the Local Authority will apply to:

- All site applicants;
- Where the applicant is not an individual (i.e. is a partnership, company or other body) to the individual who holds the most senior position within the management structure of the body applying for the licence;
- Any person appointed by the applicant to manage the site; and
- Where the person appointed to manage the site is not an individual to any individual who is to be directly concerned with the management of the site on behalf of that manager.

Considerations to be taken into account when deciding whether a person is a 'fit and proper person' are outlined in the 1960 Act, and include offences relating to fraud, violence, anti-social behaviour, housing law, etc.

Also additionally the applicant will require to pay the fee the Local Authority has set for handling a new site licence application. As per paragraph 5.2 of the report, the proposed fee for a new site licence is £793.75.

Once all prescribed information and the relevant fee has been received a Local Authority must make a decision on whether to grant a licence within 3 months. In the event a Local Authority fails to do so within this timescale the licence will be deemed to have been granted. This time limit is not automatically extended in the event that the Local Authority requests additional information from the applicant. It can only be extended via either a successful application to the sheriff for an extension, or in the event that a Local Authority is considering refusing an application in which latter case the extension only pertains for the period in which the Local Authority has given the applicant time to make representations.

Once a decision has been taken to grant a licence the applicant must be informed that their application has been approved and details provided of any licence conditions the Local Authority is putting in place. These conditions will be based around the New 'Model Standards for Residential Mobile Home Site Licences', issued by the Scottish Government in December 2018.

In the event a Local Authority is considering refusal of an application, they must make the applicant aware that this is the case and give the reasons they are considering refusal. The applicant must then be given a period of at least 28 days to make written representations in respect of the proposed decision. The time given for representations to be received does not count towards the 3 months a Local Authority has to make its decision.

If a Local Authority refuses an application for a site licence the applicant can appeal to the Sheriff.

Renewing a Site Licence

Under the new system licences must be renewed every 5 years. The procedure for renewal of a site licence mirrors the procedure above for granting a new licence, however the proposed fee for renewal of a site licence is £531.25.

Transferring a Site Licence

Again the application process for transferring a site licence closely mirrors that of applying for a first site licence, however a Local Authority cannot charge a fee for a site licence transfer application.

Enforcing the New Licensing System

The update and amendments to the 1960 Act introduce a range of new enforcement provisions. It is anticipated that any issues can be pursued informally through discussion and correspondence with site operators, however in the event that formal action is required these new powers can be summarised as follows:

Improvement Notices

This is the first of the formal enforcement measures a Local Authority would be expected to use in the event that informal measures have failed to resolve a situation. This measure can be used by a Local Authority where it appears to them that a site licence holder is failing, or has failed to comply with a site licence condition. The notice will state the licence condition which is not being met, require the licence holder to take steps to comply, and establish a time period for compliance to be achieved.

The site licence holder will have a right of appeal against any notice served.

Failure to comply with an Improvement Notice is a criminal offence. A report can be submitted to the procurator fiscal and if convicted the licence holder can be fined up to £10,000.

In the event of failure to comply with an Improvement Notice the Local Authority can carry out the works required in default and then seek to recover the costs of this work from the site licence holder. Additionally the Local Authority can serve a Penalty Notice – see below.

Penalty Notices

If a site licence holder fails to comply with an Improvement Notice, the Local Authority may serve a Penalty Notice. A Penalty Notice may also be served in the event of a site operating without a licence. The effect of such a notice is to reduce the income that can come from a site (for the duration of the notice), due to the fact that anyone living on site will not have to pay to the site licence holder:

- Any amount due for the right to station a caravan on the site;
- Any amount due for the rent of a caravan on the site;
- Any amount due for the use of the common areas on the site, and their maintenance; and
- Any commission due if a resident sells their mobile home on the site.

Residents will be required to pay any amount due for utilities (gas, electricity and water) provided to them during the period of the Penalty Notice.

The site licence holder will have a right of appeal against any notice served.

The Local Authority must notify those living on the site that a Penalty Notice has been served.

Revoking a Site Licence

This option is open to Local Authorities in the event that there are serious concerns regarding the fit and proper person status of the licence holder or management of the site, and would only be used as a last resort.

Following service of a notice stating the Local Authority's intentions, the site licence holder must be given 28 days to make written representations before a licence can be revoked. The site licence holder has a right of appeal in the event that a decision is taken to revoke a licence.

As revoking a licence could potentially leave a site without anyone to manage it 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 management of the site is established. The appointment of an interim manager must be made by a Sheriff on application from a Local Authority.

Emergency Action on a Site

The 1960 Act gives powers to the Local Authority to carry out works urgently on a site, whether licensed or not. This power can only be used in situations where there is an "imminent risk of serious harm" to someone on the land.

The site licence holder will have a right of appeal against any notice served for emergency action.

APPENDIX 2

Site Name	Location	Licence Type (No of caravans)
Twin Oaks	12 Shaws Road Larkhall	Residential (20)
Cuningar Caravan Site	Downiebrae Road Rutherglen	Residential (59) Touring (subject to density and spacing of site)
Clyde Valley Caravan Park	Kirkfieldbank Lanark	Residential (65) Holiday (50) Touring (75)
Cot Castle Caravan Park	Strathaven Road Stonehouse	Residential\Holiday (20)
Old Ponfreigh Caravan Park	Old Ponfreigh Railway Station Douglas Water Lanark	Residential (5)