**The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 Mansfield District Council Procedure**

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 mobile home site to be a Fit and Proper Person. Local authorities are 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 Regulations. The purpose of the fit and proper person test is to improve the standards of park home site management. A local authority 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 local authority can instead appoint a person to manage the site, but only with the consent of the site owner. The Regulations will apply to all relevant protected sites unless expressly exempted.

Sites that are exempted are those that are:

1. Only occupied by members of the same family; and

2. Are not being run as commercial residential sites. In determining whether a site is a “non-commercial family-occupied site”,

The Council will take into account.

1. Whether each caravan stationed on a permanent pitch and used as a permanent residence is so used only by

(i) the site owner or the site owner and one or more members of the site owner’s family; or

(ii) a member of the site owner’s family (“F”) or F and one or more members of F’s family.

2. A person is a member of the same family as another person if

(i) those persons are married to each other, in a civil partnership or live together as if they were married or in a civil partnership;

(ii) one of them is a relative of the other; or

(iii) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple. a. A “couple” means two persons who are married to each other, in a civil partnership or live together as if they were married or in a civil partnership. . b. A “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin; c. A relationship of the half-blood is to be treated as a relationship of the whole blood and the stepchild or adopted child of a person (“P”) is to be treated as P’s child.

3. The second consideration is whether the site is operated on a commercial basis.

i) A site is operated on a commercial basis if the amount which any person is required to pay the occupier of the site in respect of the right to station or reside in a caravan on the site and the use of the common areas of the site, exceeds a fair contribution towards the relevant costs OR the total amount payable to the occupier exceeds the relevant costs. a. “Relevant costs” means the total of

• any amount which the occupier is liable to pay as regards the site by way of a nondomestic rate under Part 3 of the Local Government Finance Act 1988;

• any council tax for which the occupier is liable in respect of any caravan situated on the site (other than a caravan in which the occupier resides) or any dwelling situated on the site that is not a caravan (other than a dwelling in which the occupier resides); and

• the occupier’s reasonable costs of repairs, maintenance and insurance in respect of the site. This policy sets out how applications will be looked at and determined under the Regulations. Each case will be considered on its own merits. Where there are exceptional, clear and compelling reasons to deviate from this Policy, the Council will consider doing so and will record the reasons for any deviation.

3 Local Area Profile Mansfield

Mansfield district is located in west Nottinghamshire at the heart of the United Kingdom, between Nottingham to the south, and Sheffield to the north. Of the district’s 108,576 population (ONS, 2017), approximately three-quarters live within the Mansfield urban area, which includes the market town of Mansfield and the distinct community of Mansfield Woodhouse. Mansfield is the largest urban area in Nottinghamshire, excluding the Nottingham city. Therefore, it is the main business, shopping and service centre for those living within the district, neighbouring districts and beyond.

In the district, most of the existing housing stock is concentrated within the Mansfield urban area with a lesser amount at Market Warsop and the villages. In terms of new housing, the vast majority has been built within the district's urban boundary. This development has significantly improved the range and choice of new housing and helped to support the local economy. Over the last 5 years, the average net number of dwellings built per year was 309 dwellings, as of 31 March 2018.

Within the district there has been a varied level of change in the population age density (2011 to 2017). Overall, the district has seen an increase in the number of children under 10, people aged 25-39, 50-59 and those of pensionable age. All other age ranges have decreased in density.

4. Definitions Applicant Site Owner (An Individual or in the case of a limited company the Relevant Officer) Relevant Officer

• Company: a director or other officer of the company

• Partnership: a partner

• Body corporate: a member where the conduct of the management of the body is vested in its members

• Body not falling within any of the above categories: a member of the management committee. Relevant Person Person who manages the relevant protected site, subject to the fit and proper assessment and will be entered on the Register Responsible Person Person appointed by the Relevant Person to be involved or proposed to be involved in the management of the relevant site, subject to the fit and proper assessment and will be entered on the Register.

Factors to be considered When conducting the fit and proper person assessment on the Relevant/Responsible Person, the Council will consider the following points: (a) 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 Council will have regard to:

1. whether the person has a sufficient level of competence to manage the site;
2. the management structure and funding arrangements for the site
3. the proposed management structure and funding arrangements.
4. Information relating to other Relevant Protected Sites:

• for which the site owner holds a licence issued under section 3 of the Caravan Sites and Control of Development Act 1960;

• in which the site owner has a legal estate or equitable interest; or

• that the site owner manages.

(b) Competence to manage the site The Council will review the competency of the appointed individual. The individual must have sufficient experience in site management, or have received sufficient training, and be fully aware of the relevant law as well as health and safety requirements.

(c) The management structure and funding arrangements for the site The Council will consider whether relevant management structures are in place and whether they are adequate to ensure effective management of the site. The Council will want to see that the applicant has a robust management plan, which should address the following issues:

• 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 removal A management structure would be unlikely to be suitable if:

• The Applicant is an individual or a company (including its directors) domiciled outside of the United Kingdom

• the sufficiency (or otherwise) of the Applicant’s interest or estate in the land would have a bearing as would their financial standing, management structures and competence, in order to give an overall assessment as to suitability to manage the site in a sustainable way

(d) The proposed management structure and funding arrangements in place for managing the site The Council will 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.

The Council will carefully consider instances where funding is through a third party (including an associated company) and will be wary if the applicant does not disclose to it such information as it needs to make an informed judgement on financial viability.

(e) Ownership and/or management of other Relevant Protected Sites Some Applicants or Relevant Person’s may own or manage other sites with the Council or other authority areas. The ownership or management of those sites may be relevant to the application in terms of the Applicants suitability to manage a site. Applicants must therefore provide information on whether they, the Relevant Person or a Responsible Person has had an application rejected by another local authority and if so, the reasons why. With this information, the Council will be able to direct its enquiries, to confirm the details provided and whether there are any matters that may be relevant to the application. In some cases, the Applicant will be required to provide information about other persons, Responsible Persons, who are involved in the management of the site. This is necessary to ensure consistent standards are applied to companies and other organisations that are not individuals. By applying the considerations within the assessment which relate to any natural person with responsibility for the site management, the Council can, in making its fit and proper assessment, give an equivalent level of scrutiny to key individuals in companies and other bodies operating sites as for individuals who are site owners and managers.

5. Personal information relating to the Fit and Proper Person

The Applicant must provide a criminal record check for themselves and the Relevant/Responsible Person, dated no more than 6 months prior to the application. If instead of a person, the Applicant has appointed a company or other organisation to manage the site, then the applicant must provide, for each relevant officer of the company or organisation: (a) the person’s name; and

(b) details of the person’s role (if any) in relation to the management of the site.

(c) a criminal records certificate for the person appointed (or to be appointed) to manage the site In addition, the Council will carry out checks with external organisations, other regulatory bodies and other council departments. Considerations that are relevant to the fit and Proper Person assessment are whether the relevant person(s)

- a) has committed any offence involving fraud or other dishonesty, violence, arson or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements); b) has contravened any provision of the law relating to housing, caravan sites, mobile homes, public health, planning or environmental health or of landlord and tenant law;

c) has contravened any provision of the Equality Act 2010 in, or in connection with,the carrying on of any business;

d) has harassed any person in relation to Section 3 of the Caravan Sites Act 1968 as amended or otherwise

e) is or has been within the past 10 years, personally insolvent

f) is or has been within the past 10 years, disqualified from acting as a company director; g) has the right to work in the United Kingdom

h) is a member of any redress scheme for dealing with complaints in connection with the management of the site The requirement in (h) for the Relevant Person to be a member of a redress scheme is not currently in place (as at June 2022) so Applicants will be unable to provide that information. The Relevant Person may however be a member of a trade body and may want to provide that information in support of their application. If they do, it is for the Council to decide its relevance to the application, its decision and any conditions that it may decide to attach to the entry.

When considering if there is evidence of harassing behaviour the Council will rely on convictions by the courts as evidence of such behaviour. Where the Council has records of previous substantiated harassment complaints made against a site owner or their manager it will take these into consideration in the fit and proper person determination. Such complaints may identify further potential risks and provide an indication of potential underlying problems with the management of the site or the site owner’s lack of experience/skills in dealing with customers. The Council will consider addressing any underlying issues by attaching conditions to the individual’s entry on the register. To enable the Council to make consider the application as quickly as they possible, the Applicant is requested to provide some minimum information and documents with the application form. If after considering the information the Council requires clarification or further information, they will request the Applicant to provide that information before the application can be determined.

6. Other Information to be taken into consideration The Fit and Proper Person Test is a broad concept and in addition, the Council will consider the conduct of any person associated or formerly associated with the relevant person (whether on a personal, work or other basis) as part of fit and proper person assessment. The Council will establish whether an individual is considered to be an associate of the relevant person and then whether their conduct is relevant to the application. A relevant associate could be 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 the quiet enjoyment of their homes.

7. Miscellaneous What is considered as “involvement in the management of the park” in an unofficial role will differ from site to site and the Council will consider the evidence and circumstances on each individual case. The Council may will to take account of factors such as how regularly the person or organisation in their unofficial role attends the park, the level of involvement with residents and what impact(s) being on the site has on residents’ in relation to factors such as their wellbeing, welfare, quiet enjoyment of their homes and safety. E.g. a person carrying out maintenance on the park every month may not be considered to be involved in the site’s management. However, if that person is involved on a regular basis with dealing with or seen to be dealing with management issues such as residents’ queries or contractual matters, on behalf of the site manager or a relevant officer, that person would more likely be involved in the site’s management Where the owner of a small site permits a relative to manage the site each time they go on holiday, the relative will clearly be involved in the management of the site. A site owner has a responsibility to know who is involved in the management of their site and ensure the right management and reporting structures are in place. Where a site owner makes no or very little effort to be transparent it could be an indication of other site management issues.

8. Decisions, notification and rights of appeal The Council will make a decision on the application in a timely and practicable manner and either:

(a) Where the decision is to grant the application unconditionally and include the relevant person on the register for 5 years, serve a final decision notice on the applicant; or

(b) Otherwise, serve a preliminary decision notice on the applicant. Granting the application unconditionally Where the Council is satisfied that the applicant meets the fit and proper person test unconditionally, it will include the applicant on the register for 5 years. The Council will issue a final decision notice to the applicant to inform them of its decision. Preliminary decision notice The preliminary decision notice will set out:

(a) the date the preliminary decision notice is served;

(b) the preliminary decision;

(c) the reasons for it;

(d) the date it is proposed that the final decision will have effect;

(e) information about the right to make written representations;

(f) 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; and

(g) where the preliminary decision is to grant the application subject to conditions, the consequences of failing to comply with any condition. The final decision notice will include:

(a) the date the final decision notice is served;

(b) the final decision;

(c) the reasons for the decision;

(d) when the decision is to take effect;

(e) information about:

(i) the right of appeal to the First Tier Tribunal; and

(ii) the period within which an appeal may be made.

Granting the application subject to condition(s). The fit and proper person test is aimed at ensuring that the person managing the site is competent and so any conditions imposed will relate directly to the person’s ability to secure the proper management of the site. The Council will issue a preliminary notice to the applicant to inform them of its decision. Refusing the application Should the Council determine that the applicant does not meet the requirements, and attaching conditions would not be appropriate, the Council can refuse to grant the application.

9. 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 with the day after the day on which the notice was served. Any representations must be in writing. The Council will as soon as reasonably practicable, after the end of the period allowed for making representations, make a final decision and serve the decision notice on the applicant. The review of representations, made following the service of a preliminary decision notice will be undertaken by a Head of Service or a Director of the Council, who was not involved in the decision to service the a preliminary decision notice.

10. Appeals against Decision Notice The applicant can decide to appeal the decision by making an application to the First-tier Tribunal (Property Chamber) (“the tribunal”). The applicant is permitted to appeal against any decisions served by the Council. These could include:

(a) including the relevant person on the register for an effective period of less than 5 years;

(b) including the relevant person on the register subject to conditions; and (c) 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. If they fail to do so they will be committing an offence. An appellant will not be able to claim compensation for losses incurred pending the outcome of an appeal. An appeal to the Tribunal must be made within 28 days of the service of the Final Decision Notice pursuant to Rule 27 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. 11. Fit and Proper Person Register The Council will 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 will be open to inspection by the public during normal office hours. This register will also be published online. The register will provide a record of the outcome (as discussed above) of the fit and proper person tests the Council have carried out for sites. The register will include the following:

(a) the name and business contact details of the person;

(b) the name and address of the relevant protected site to which the application relates;

(c) the status of the person (site owner or manager of the site);

(d) the dates of the first and last day of the period for which the person’s inclusion in the register has effect;

(e) whether any condition is attached to the person’s inclusion in the register; and

(f) 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); and

(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 site, including decisions made on how long a person’s inclusion is for, up to a maximum of 5 years. In order to comply with the fit and proper person requirement a site owner must at least two months before the period (e.g. 5 years) comes to an end submit a new application for the person (or alternative) to be included in the register. Where there are rejected applications, the following information must be included in the register:

(a) the name and address of the site to which the application relates;

(b) that an application in respect of the site has been rejected; and

(c) the date on which the application was rejected. Details of the rejected 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. It must be noted that the name of the rejected applicant will not be included on the register. The Council will however 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 will include the following information:

(a) the name and business contact details of the person;

(b) the name and address of the site which the person has been appointed to manage;

(c) the status of the person;

(d) the dates of the first and last day of the period for which the person’s inclusion in the register has effect;

(e) whether any condition is attached to the person’s inclusion in the register; and

(f) 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); and

(iii) the date any condition is varied or satisfied (if applicable).

12. Removal from Register/Variation of Conditions (“Review”) If, after a person is included in the register and new information relevant to the person’s inclusion becomes available, the Council may decide to:

(a) remove the person from the register;

(b) impose a condition on the inclusion of the person in the register (whether or not there are conditions already imposed;

(c) vary a condition; or

(d) remove a condition.

13. Notice of Proposed Action Before taking action specified in paragraph 12, the Council will serve a notice on the site owner/occupier. The Notice will clearly state:

(a) the date the notice of proposed action is served;

(b) the action the Council proposes to take;

(c) the reasons for it;

(d) the date it is proposed that the Council will take the action;

(e) information about the right to make written representations;

(f) 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; and

(g)where the proposed 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 said conditions. A removal of a condition will generally be a positive step which is unlikely to be opposed. It is for that reason that a notice of proposed action is not required. The Council will make the Applicant aware of the decision in writing and also ensure the register is updated.

14. Notice of Action Taken Where a notice of proposed action is given, the occupier will have 28 days, starting from the day after the notice is served, in which to make representations. The Council will, 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 will serve a further notice on the occupier, indicating the action that has been taken, within the period of 5 working days beginning with the day after the day on which the action was taken. The Notice of Action will set out—

(a) the date the notice of action is served;

(b) the fact that they have taken the action;

(c) the reasons for doing so;

(d) the date the action was taken;

(e) information about the right of appeal and the period within which an appeal may be made;

(f) where the action is to remove a person from the register, the consequences of causingor permitting the land to be used as a relevant protected site in contravention of regulations; and

(g) where the action is to impose a condition on the inclusion of a person in he register or to vary a condition, the consequences of failing to comply with any condition. There may be circumstances where the Council may decide not to continue with an action it has decided to take. Where the local authority decides not to take the action it may withdraw or amend

(a) a preliminary decision notice before service of the final decision notice;

(b) a final decision notice before the decision to which it relates takes effect; or

(c) a notice of proposed action before the proposed action is taken. To withdraw or amend a notice, the Council will serve notice on the person on whom the original notice was served stating:

a) That it is withdrawing/amending the original notice (a copy of the original notice should be attached for reference)

b) The reasons for withdrawing the notice c) the date it takes effect; and d) the implications of the decisions in relation to their entry on the register 15. Appeals against Notice of Action A person on whom a notice of action is served may appeal to the against:

(a) any decision to remove the relevant person from the register;

(b) any decision to impose a condition on the inclusion of the relevant person in the register; and

(c) any decision to vary a condition.

No compensation may be claimed for loss suffered, pending the outcome of the appeal, in consequence of the Council:

1. making a final decision; or taking an action mentioned in paragraph number 12. (a) (b) (c)

An appeal to the Tribunal must be made within 28 days of the service of the Final Decision Notice pursuant to Rule 27 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

16. Offences An owner (occupier) of land commits an offence if he causes or permits any part of the land to be used as a relevant protected site (which falls within the scope of the Regulations) without the manager of the site being registered with the local authority as a fit and proper person. An applicant also commits an offence if he:

(a) withholds information from a registration application or

(b) includes false or misleading information in a registration application

(c) fails to comply with a condition imposed under Regulation 6(2)(b) or Regulation 8(1) An owner (occupier) of land who is guilty of an offence is liable on summary conviction to a level 5 fine (unlimited). Where an owner (occupier) of land who holds a site licence in respect of that land contravenes the relevant Regulations, the First-tier Tribunal may, on application by the authority, make an order revoking the site licence in question on the day specified in the order.

Where:

(a) an owner (occupier) of land who holds a site licence in respect of that land is convicted of an offence under Regulation 11 for a contravention of the fit and proper person requirement and

(b) has been convicted on two or more previous occasions of the offence in relation to that land, The court before which the occupier is convicted may, on application by the local authority, make an order revoking the site licence in question.

17. Enforcement

The Council will have regard to its General / Corporate Enforcement Policy, the relevant provisions of the Act, any relevant guidance and / or codes of practice when considering taking enforcement action. It is the intention of the Council to establish and maintain enforcement protocols with other enforcement agencies. The Council will work closely other Councils and enforcement agencies and exchange information, where permitted to do so by law and any proposed action that the authority considers necessary. The Council will avoid duplication with other regulatory regimes.