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Our reference:
Your reference:
Date: 2 May 2014

To all Members of the Council

Dear Councillor

A meeting of the CABINET will be held on Tuesday 13 May 2014 at 7.00 pm in the Council Chamber, Civic Centre, Pavilion Road, West Bridgford to consider the following items of business.

Yours sincerely

Executive Manager Operations and Corporate Governance

AGENDA

1. Apologies for absence.
2. Declarations of Interest.
3. Minutes of the Meeting held on Tuesday 11 March 2014 (previously circulated).
4. Local Authorities (Executive Arrangements) Meetings and Access to Information) (England) Regulations 2012

It is recommended that the public be excluded from the meeting for consideration of the following item of business pursuant to the above Regulations on the grounds that it is likely that exempt information be disclosed as defined in paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972.

Key Decisions

5. Potential Options for Disposal of Land and Property

The report of the Executive Manager - Transformation is attached (pages 1 - 10).
6. Mobile Homes Act 2013 - Changes to the Licensing of Mobile Home Sites

The report of the Executive Manager - Neighbourhoods is attached (pages 11 - 22).

Non Key Decisions

7. Development of the Arena Site

The report of the Chief Executive will follow.

Budget and Policy Framework Items

None

Matters referred from Scrutiny

None.

Membership

Chairman: Councillor J N Clarke

Vice-Chairman: Councillor J A Cranswick

Councillors D G Bell, J E Fearon, N C Lawrence, D J Mason

Meeting Room Guidance

Fire Alarm Evacuation: in the event of an alarm sounding please evacuate the building using the nearest fire exit, normally through the Council Chamber. You should assemble in the Nottingham Forest car park adjacent to the main gates.

Toilets are located opposite Committee Room 2.

Mobile Phones: For the benefit of others please ensure that your mobile phone is switched off whilst you are in the meeting.

Microphones: When you are invited to speak please press the button on your microphone, a red light will appear on the stem. Please ensure that you switch this off after you have spoken.

Report of the Executive Manager - Neighbourhoods

Cabinet Portfolio Holder – Councillor D J Mason

Summary

This report details the introduction and provisions of a new licensing regime for mobile home sites in the Borough. Rushcliffe Borough Council has granted Caravan site licences under The Caravan Sites and Control of Development Act 1960 (as amended) for sites that have planning permission for a caravan site. This Act has now been amended by the Mobile Homes Act 2013 which was introduced in order to provide greater protection to occupiers of residential park homes and caravans. The existing legislation was also deemed outdated as it had not been changed for more than 50 years. This Act introduces some important changes to the buying, selling or gifting of a park home and the pitch fee review process. For site licensing functions, the Act introduces additional powers for Local Authorities to ensure compliance with site licence conditions. The Council can also now charge a fee for these licensing functions, serve enforcement notices and oversee and publish any site rules relating to a site. Currently there are 7 licensed Mobile Home sites in the Borough to which this policy will relate if approved.

Recommendation

It is RECOMMENDED that

- a) the new Mobile Homes Act 2013 Policy Statement be considered and approved (attached as **appendix A**);
- b) the option to calculate annual fees on a per pitch basis be endorsed; and
- c) the proposal to exempt certain sites from the annual fee charge be approved.

Background

1. The Mobile Homes Act 2013 (MHA 2013) was given Royal Assent on 26 March 2013 – it was introduced as a Private Members Bill aimed at improving the rights of mobile home owners. A Communities and Local Government Select Committee report had identified widespread malpractice amongst mobile home park site owners and concluded the existing legislative framework was inadequate to deal with the issues faced by some residents on these parks.

2. Some parts of the MHA 2013 were implemented on 26 May such as the selling and gifting of park homes and pitch fee review provisions which has changed the way site owners carry out these functions. At the same time the requirement for site rule changes came into force. Regulations have been made and are now in force which sets out the timescales within which site owners will need to replace existing site rules with new ones that should be deposited with the Local Authority.
3. The MHA 2013 also makes provision for regulations to be made requiring site owners to be “Fit and Proper Persons” and for Local Authorities to keep an up to date register of fit and proper persons managing relevant protected sites. These elements will be further reviewed by the Government in 2017 whereupon a final decision will be made on their introduction.
4. The changes introduced by the MHA 2013 for site licensing came into force on 1 April 2014. These provisions are contained in part 1 of the Act. These include powers for local authorities to charge fees for their licensing functions in respect of “relevant protected sites”. A relevant protected site is defined in the Act as any land to be used as a caravan site with planning consent. However this does not include a site where a licence is either granted for holiday use or has conditions eg via planning which restrict the usage of the site for the stationing of caravans for human habitation at certain times of the year.
5. Relevant protected sites to which the legislation applies are typically known as residential parks, mobile home parks and Gypsy Roma and Traveller sites. Sites which do not fall within the definition of ‘relevant protected sites’ are still subject to the licensing requirements contained within the Caravan Sites and Control of Development Act 1960 (as amended) (CSCDA60), but the provisions relating to payment of fees do not apply.
6. Under the MHA 2013 a fee can now be charged for applications to grant a new licence, applications to transfer or amend an existing licence and annual licence fees for administering and monitoring existing site licences.
7. Before a local authority can charge a fee, the MHA 2013 specifies that a fees policy is prepared and published. When fixing a fee the local authority must act in accordance with their fees policy, may fix different fees in different cases and may determine that no fee is required in some cases.
8. Any fees charged must fairly cover the costs incurred by a local authority under its functions in Part 1 of the Act and not include costs of enforcement action. They must be reasonable and transparent and whilst different fees can apply to different types of cases, there must be consistency in the fee structure and its application.

Proposed Fee Structure

9. The fees in this policy have been determined by following the Department of Communities and Local Government guidance for Local Authorities on fee setting. The fees structure has been calculated in accordance with the provisions of the MHA 2013 which allows a local authority to include costs for administration of the licence, officer visits to the site, travel costs, consultations, meetings, undertakings and informal advice.

10. Annual fees can be calculated by using one of three options

Option 1 - a fee per pitch (A fee based on the total cost to the local authority carrying out its annual licensing function for all sites, divided by the total number of units over all the sites which will give a price per unit),

Option 2 - a fee based on site size bandings, or

Option 3 – a fee based on a risk rating that takes into account the size of a site; the level of compliance on a site and confidence in management

11. The annual fee in the draft policy has been determined by using **option 1** in the guidance as it is considered to offer the most transparency and fairness to both residents and site owners.

12. Charges for new site licence applications, transfers and amendments and deposit of site rules will be made following receipt of the appropriate application from a site owner.

13. Charges for the first year (2014/15) have been based on average estimates and will be charged to the site owner who is the site licence holder.

Exemption of certain relevant protected sites

14. The Act allows the Council to exempt certain sites from charging for licensing functions. In line with emerging good practice it is proposed that small sites with 3 units or less, or sites for the site owner and their family (does not include sites that are run for financial gain) be exempted from charges for the annual fee as the Council do not intend to carry out annual inspections of these sites, however, any complaints would be dealt with as appropriate.

Consultation

15. The Council held a four week consultation process with residents and the owners of existing sites in relation to the proposed fee policy including a well-attended information event held in the Council Chamber on 10 March 2014. In total eleven responses were received and the key concerns raised along with the Council response is summarised in the table below:

Concern	Council Response
That the Council proposes to charge an annual fee for site licensing in addition to Council Tax	In common with the majority of new licensing and regulatory legislation the provisions allow for the Council to charge appropriate fees to cover its costs for delivery of this new regime. It is considered that this should be borne by the site owners/residents who will derive the benefit of this service.
That the legislation allows the annual fee to be passed on from the site owner to residents	This is not within the Council's control as the legislation provides a clear provision to allow annual fees for the first year to be passed on by the site owner at their discretion

Concern	Council Response
Will you charge for empty units on sites?	The Council will only charge the site owner for all pitches on the site that are occupied by a home. A charge <u>will not</u> be made for empty pitches with just a base
What about future increases in charges?	The annual fee for each site will be reviewed on a yearly basis and will only include the appropriate fee for the Council to recover its costs for delivery of the licensing function
That charges are excessive and are not in proportion to the costs of managing a site licence	The charges have been calculated based on the appropriate officer hourly rate and an estimation of time required to carry out the licensing administration and monitoring functions, plus any other charges that the Council can legitimately include in the annual fee. (para 10)

Review of the Policy and Fee Structure

16. The Fee structure will be assessed each year to determine accuracy as part of the Council's annual fees and charges setting process. The remainder of the policy will be reviewed on a five yearly cycle.

Financial Comments

Mobile Homes Licence Annual Fee Charges have been calculated as a fee per pitch based on average hourly rate and time taken to inspect the premises. New Licences, Amendments and Site Rules Deposits are based on the hourly rates and the officer time taken to process the applications.

The annual income generated is estimated to be £4,730.

Section 17 Crime and Disorder Act

The introduction of the MHA 2013 by the Government is a direct response following a Select Committee report which highlighted concerns over the suitability of the existing legislation to protect site residents, some of whom are elderly and vulnerable, from malpractice by some site owners.

Diversity

There are no direct diversity implications from this report

Background Papers Available for Inspection: Nil

Rushcliffe Borough Council
Draft Mobile Homes Fees Policy
Consultation Document - February 2014



Contents

1. Introduction
2. Fees charged for licensing
3. Application for a new site license
4. Transfer/Amendment of an existing site license
5. Annual fees for site licenses
6. Enforcement Costs
7. Fees for depositing Site rules
8. Publishing and revising the fees policy

Appendix 1 – Elements which can be included in fee setting

Related documents

The following documents have been consulted when drafting this policy

The Caravan Sites and Control of Development Act 1960 as amended (CSCDA60)

Mobile Homes Act 2013 (MHA 2013)

Regulators Compliance Code

RBC Corporate Enforcement Policy

DCLG Guidance on Site Licensing Fee Setting – (link on website)

1. Introduction

Rushcliffe Borough Council has granted Caravan site licenses under The Caravan Sites and Control of Development Act 1960 (as amended) for sites that have planning permission for a caravan site. The CSCDA60 has now been amended by the Mobile Homes Act 2013. The MHA 2013 was introduced in order to provide greater protection to occupiers of residential park homes and caravans as the existing legislation had not been updated for more than 50 years. This Act introduces some important changes to the buying, selling or gifting of a park home and the pitch fee review process. There is an expectation that councils will inspect sites annually and use the additional powers to ensure compliance with site licence conditions. The council can also now charge a fee for different licensing functions, serve enforcement notices and publish any site rules relating to a site. The Fee generated by the MHA 2013 is not designed to include investigation of harassment or matters not related to the Site License – these should be dealt with through Residents Associations or other appropriate channels.

2. Fees charged for site licenses

The changes introduced by the MHA 2013 for Site Licensing come into force on 1st April 2014. These include powers for local authorities to charge fees for their licensing functions in respect of “relevant protected sites”. A relevant protected site is defined in the Act as any land to be used as a caravan site with planning consent, other than one where a licence is:

- Granted for holiday use only
- In any other way subject to conditions which restrict the usage of the site for the stationing of caravans for human habitation at certain times of the year (such as planning conditions).

Relevant protected sites to which the legislation applies are typically known as residential parks, mobile home parks and Gypsy Roma and Traveller sites and so on.

Sites which do not fall within the definition of ‘relevant protected sites’ are still subject to the licensing requirements contained within the CSCDA60, but the provisions relating to payment of fees do not apply.

Under the new Act a fee can be charged for

- applications to grant a new licence
- applications to transfer or amend an existing licence
- Annual licence fees for administering and monitoring existing site licences.

This policy details the fees to be charged for all of these licensing functions.

The fee levels have been calculated based on the estimated average time and costs involved in undertaking the activities involved. (Appendix 1 details what the council can consider in calculating the fee levels)

The fee rates set out in this policy cover the period 1st April 2014 to 31st March 2015.

3. Application for a new site licence

All sites require a site licence to operate (subject to exemptions in the CSCDA60); failure to apply for licence is an offence under Section 1(2) of CSCDA60. The council may only issue a licence for a site with a valid and correct planning permission for the use. Any application made before the planning status has been awarded must be processed within 6 weeks of the planning decision. Sites which already have the correct planning permission in place must be processed within 2 months of the licence application.

The fee for a new site license is currently **£407.57 fixed cost plus £8.14 per pitch** to reflect the variation in the cost of processing the application according to the size of the site.

4. Transfer/amendment of existing site license

Where a licence holder wishes to transfer the licence an application must be made to the council, for which a fee is payable. The fee must accompany the application to transfer the licence.

Similarly where a site owner requests an amendment to site licence conditions the council can charge a fee for this function.

Applications can be made by licence holders to vary or cancel conditions, the fee is payable at the application stage.

If the council deem it necessary to alter conditions there will be no fee payable.

The fee for an application for transfer or amendment of up to two site license conditions is currently **£152.23**

Where significant amendments to the site license conditions are requested this is likely to involve a site visit so the fee for this licensing activity will increase to **£274.35**

5. Annual fees for Exiting Site Licences

All relevant protected sites must pay an annual fee to the council (subject to any exemptions stated in this policy). The fee is due on 1st April 2014 and annually thereafter.

The annual fee covers the costs associated with administration, an annual site inspection to ensure compliance with the site licence conditions and a revisit to ensure compliance with any outstanding works required. If there is still a breach in site licence condition at the point of the revisit further charges may be payable to cover the cost of any enforcement action which may be taken. (See Enforcement costs – section 6.)

The fee is currently **£12.10 per pitch** and is calculated on a price per unit based on the total estimated cost to the council of carrying out its annual licensing function for

all sites in the Borough. The unit cost is multiplied by the actual number of units on each site to provide the annual fee payable.

The DCLG guidance for fee setting offers a variety of suggested options for local authorities in calculating the annual fee:

Option 1 – fee per pitch (A fee based on the total cost to the local authority carrying out its annual licensing function for all sites, divided by the total number of units over all the sites which will give a price per unit)

Option 2 – fee based on site size bandings

Option 3 – fee based on a risk rating that takes into account the size of a site; the level of compliance on a site and confidence in management

Option 1 has been adopted as it is considered to offer the most transparency and fairness to both residents and site owners.

Charges for the first year (2014/15) have been based on average estimates. Fees will be assessed each year to determine accuracy as part of the Council's annual fees and charges setting process.

Conditions

The conditions on the existing site license will remain the same until the Council deem they are out-dated or incorrect and then a review will take place or unless an application is made to amend conditions on the license by the site owner.

Sites exempted from Annual Licensing fees

- Sites that are not relevant protected sites
- Sites with 3 units or less
- Sites for the Site owner and their family (does not include sites that are run for financial gain)

These categories of site are exempt from the annual licensing fee as the council do not intend to carry out annual inspections of these sites, however, any complaints would be dealt with as appropriate.

Charging Arrangements

For the purpose of this policy the period covered by the annual fee will be 1 April to 31 March each financial year. The fee will be charged to the site owner/license holder and invoices will be sent at the start of the financial year with payment due within 30 days. (Legislation allows the license holder to pass on the annual fee cost for 2014/15 to the resident's pitch fee)

Where a new site licence is issued part way through the year, the annual fee will also be due in the same year and an invoice will be sent after the licence has been granted for the pro-rata amount.

Where an amended licence is issued part way through the year (which included either additional units or a reduction in units), the change in annual fee would be calculated on a pro-rata basis for the remainder of the year and difference in fee would be adjusted against the following years annual fee.

In the event an annual fee is not paid within the terms of the invoice the council may apply to the First Tier Tribunal (Property Chamber) for an order requiring the licence holder to pay the amount due.

6. Enforcement costs

Where there has been a breach in a site licence condition which comes to the attention of the council we may serve a compliance notice. The CSCDA60 details the elements which a local authority may include when imposing a charge for enforcement action. These include the time involved in deciding to serve and prepare the notice. A detailed breakdown of the relevant expenses would be provided with the compliance notice. Charges would be based on an hourly rate in addition to any other costs incurred for example legal costs.

Hourly rate for enforcement costs = £48.85

Charges for enforcement costs cannot be passed onto the residents pitch fee.

If any works in the compliance notice are not carried out the licence holder commits an offence and the local authority may consider taking legal proceedings. Any costs associated with this process would be at the discretion of the court.

If a prosecution was successfully taken, the council would have the power to carry out the works in default of the licence holder.

7. Fees for depositing Site rules

Site Rules are different to the site licence conditions and are put in place by the owner of a site to ensure acceptable standards are maintained which will be of benefit to occupiers or will promote and maintain community cohesion on the site. The MHA13 changes the way site rules must be agreed between both parties. The council must keep an up to date register of site rules on relevant protected sites and publish the register on-line.

Before publishing the site rules the council will ensure the rules deposited have been made in accordance with the statutory procedure – a fee can be charged for this function.

Any site rules deposited with the local authority for the first time or applications to vary or delete existing site rules must be accompanied by the appropriate fee. The fee is the same for either a first deposit or for a subsequent variation or deletion. This is because the process will be very similar for all three types of deposits.

The fee is currently **£126.57** and reflects the fixed costs for this function.

8. Publishing and revising the fee policy

This fees policy will be published on the Rushcliffe Borough Council website at www.rushcliffe.gov.uk. (page to be determined) The fees detailed in this policy have been determined based on experience of dealing with site licensing historically with consideration of the changes the new Act has introduced. Some of the processes are new (for example the depositing of site rules) and therefore estimates have been made as to the cost of providing these services. In addition, at the time of producing this policy some elements of the licensing regime are still awaiting further regulation by government which may impact on the processes and the time involved and may therefore result in a revision to the proposed charges.

This policy will be revised no later than March 2015.

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Elements included in fee setting

The Department for Communities and Local Government guidance sets out the activities that the Council can include when calculating its annual fee, these include:

- letter writing/ telephone calls etc to make appointments and requesting any documents or other information from the site owner or from any third party in connection with the licensing process;
- handling enquiries and complaints
- updating hard files/ computer systems
- updating the EU Directive website if appropriate
- processing the licensing fee
- time for reviewing necessary documents and certificates
- downloading photographs
- preparing reports on contraventions
- review by manager or lawyers
- review any consultation responses from third parties
- carrying out any risk assessment process considered necessary
- a pre- programmed full site inspection
- a follow – up inspection to check compliance following programmed inspection