



# Licensing and Health and Safety Enforcement Committee

**TUESDAY 15 OCTOBER 2019 AT 7.30 PM**

**DBC Council Chamber - The Forum**

The Councillors listed below are requested to attend the above meeting, on the day and at the time and place stated, to consider the business set out in this agenda.

#### Membership

Councillor Allen	Councillor Johnson
Councillor Mrs Bassadone	Councillor Link
Councillor Bhinder (Vice-Chairman)	Councillor Peter
Councillor Bowden	Councillor Pringle
Councillor P Hearn (Chairman)	Councillor Rogers
Councillor Imarni	Councillor R Sutton

For further information, please contact Corporate and Democratic Support or 01442 228209

## **AGENDA**

- 6. MOBILE HOMES FEES POLICY, CONSULTATION OUTCOME (Pages 2 - 17)**

# Agenda Item 6



## AGENDA ITEM: 5

### SUMMARY

<b>Report for:</b>	<b>Licensing, Health &amp; Safety and Enforcement Committee</b>
<b>Date of meeting:</b>	<b>15 October 2019</b>
<b>PART:</b>	<b>I</b>
If Part II, reason:	

<b>Title of report:</b>	<b>Mobile Homes Fees Policy, Consultation Outcome</b>
Contact:	Nathan March – Licensing Team Leader, Corporate and Contracted Services
Purpose of report:	To introduce a new draft policy and fees for agreement to go to consultation.
Recommendations	1. That the Committee consider the consultation response in regards to the draft policy and whether to adopt the policy, with or without any amendments.
Corporate objectives:	<ul style="list-style-type: none"><li>• Providing good quality affordable homes, in particular for those most in need.</li><li>• Delivering an efficient and modern council</li></ul>
Implications:	<p><u>Equalities Implications</u></p> <p>None – The impact of the proposals will only affect licence holders, and potential applicants.</p> <p><u>Financial / Value for Money / Risk / Health And Safety Implications</u></p> <p>Ensuring that a fees policy is set via the correct process, and that fees are established that achieve cost recovery ensures value for money for licence holders, and appropriate levels of</p>

	<p>income to the Council to allow for it to meet its responsibilities, whilst keeping the risk of any challenge to the fees low.</p> <p>Given the nature of the consultation response, there is a possibility of a legal challenge in relation to the legality of the policy should it be adopted.</p>
Consultees:	<p>The policy is required in order that fees may be charged. The fees that are subject to the policy only affect existing, and potential Mobile Home Site owners, therefore a short and direct consultation to existing owners, together with notification of the consultation on the Council's website is considered sufficient.</p> <p>Internally, the Finance team have already been consulted during the drafting of this policy.</p>
Background papers:	<p>Draft Mobile Homes Fees Policy (attached)</p> <p>Current Mobile Homes Fees Policy available at <a href="https://www.dacorum.gov.uk/docs/default-source/council-democracy/mobile-homes-policy.pdf?sfvrsn=0">https://www.dacorum.gov.uk/docs/default-source/council-democracy/mobile-homes-policy.pdf?sfvrsn=0</a></p>
Glossary of acronyms and any other abbreviations used in this report:	

## 1. BACKGROUND

- 1.1. On 15 June 2019, the Committee agreed that the draft new Mobile Homes Fees policy should go out for consultation. The Consultation took place between 22 July and 3 September.

## 2. CONSULTATION RESPONSES AND IMPLICATIONS

- 2.1. Current licensees were advised directly of the consultation, and it was also publicised on the Council's website.
- 2.2. Only one response was received to the consultation (attached as Appendix 1), which was from one of the current licensees. There was an indication from another licensee that they may submit a response, no such response was received.
- 2.3. Whilst only one response was received, this response makes strong claims in regards to the inability of the Council to make such changes to its policy. As a result of the position being taken by the consultee, legal advice has been sort on the matter.

## 3. Legal Advice

- 3.1. Given the assertion in the consultation received that it is not possible for the Council to 'start again', advice was sought from the Legal team in regards to this, and the suggestion that any such review of the Policy would therefore be ultra vires (i.e. outside of the power of the Council).
- 3.2. Following significant consideration of the contents of the consultation response, together with thorough revision of the relevant sections of the legislation, the response from Legal on this matter was:

[The consultee claims] that the local authority cannot make changes to the set fees as the legislation only talks about making changes to the 'Fee Policy'. Whilst I agree that the legislation talks about making changes to the Fee Policy and no specific mention is made of making changes to the fees I do not, however, agree that they cannot be changed by virtue of the fact that the set fees form part of the Fee Policy - meaning that, if the Fee Policy can be changed so can the fees; these are intrinsically linked. The only proviso is that they be published and the local authority meets all the prescribed conditions when determining the changes as per the legislation.

The fee charged must be in accordance with the published policy (section 10A) Section 5A (2) of the Act provides that the local authority in setting annual fees must advise the site owner of the extent to which they have had regard to deficits and surpluses from the previous year - which clearly suggests the fee can change.

Section 5A states that it is 'an annual fee fixed by the local authority' but also see the wording under ss.2 - '...the matters to which they have had regard in fixing the fee for the year in question' pointing to the fact that the fee can certainly be changed annually.

If the fees are those that are fixed by the local authority and the legislation allows for the fees policy to be revised, this must include revising the fees, especially given the wording of ss.2.

- 3.3. Therefore, in summary, the legal view on this matter is that the policy and fees can be reviewed, as long as the relevant prescribed conditions are met.

#### **4. Historic Surpluses and Deficits**

- 4.1. The consultee also raises questions in regards to the consideration of surpluses and deficits when setting the annual fees. As a result of the responsibility for caravan site licensing being passed from the Environment and Community Protection team in 2018, the historic consideration of surpluses and deficits are not readily available, and have been requested.
- 4.2. The fees that have been charged under the current policy are not sufficient to recover the costs that have been incurred in the regulation of these sites since they became the responsibility of Licensing.
- 4.3. It is proposed that in considering the new fees policy, and the connected fees, the Council draws a line under any historic deficits and charges the fees as estimated in the new policy for the first year of this policy, before reassessing these for the 2020/2021 financial year. As the fee setting process takes place ahead of start of each new financial year, surpluses and

deficits have to be considered from the previous year to have a full picture of the work that has been carried out over that period.

4.4. An amendment to the draft policy (Appendix 2) has been proposed in section 5 (page 4 of the policy), to reflect this.

## **5. RECOMMENDATIONS**

5.1. That the Committee consider the response to the consultation, together with the advice provided by the Legal team, and consider whether the Policy should be adopted, with or without any amendments, including the proposed amendment referred to in 4.4 above.

Dear Dacorum Council

We respond to your proposal for a new fees policy as follow.

We are of the view that the Council cannot make significant changes to the fees policy and the way in which they charge.

The Mobile Homes Act 2013 changed the Caravan Sites and Control of Developments Act and allowed the Council to charge a fee under sections 3, 5A, 8 and 10. The legislation states that before charging a fee, the local authority must prepare and publish a fees policy and that when setting a fee they must act in accordance with their fees policy. Further when requiring a licence holder to pay an annual fee, the local authority must inform the licence holder of the matter to which they have had regard when setting the fee and in particular the extent to which they have had regard to surpluses and deficits in the accounts for the annual fee for previous years.

Dacorum Council set fees in 2014 and should have acted in accordance with this policy and kept accounts for expenditure which year on year would have reflected on actual expenditure based on previous years. The legislation does not allow the Council to simply start again and set new fees – it must be a progression from the starting point and any new fee must be a reflection of the fees policy and actual expenditure by the Council in the years following the making of the policy.

The added complication is that the licence fee has been passed on to the residents in the first year it became payable and remains as part of their pitch fee. There is no legislative ability to revisit this due to a Council seeking to “start again.” Changes can only be made to the policy itself and not to the fees.

Accordingly we are of the view that the Council are unable to make the changes to the fees suggested and if they continue with this it would be ultra vires and appealable.

If you would like to discuss any aspect of this please feel free to contact me.

Kind regards

**[redacted]**  
**[redacted]**  
**[redacted]**



# Mobile Homes Fees Policy



Version no.	1.0 DRAFT
Date of last revision	19

Working in partnership, to create a Borough which enables the communities of Dacorum to thrive and prosper

Affordable Housing ♦ Regeneration ♦ Building Community Capacity ♦ Safe and Clean Environment ♦ Dacorum Delivers

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## Duration of the Policy

This policy will remain in force until reviewed.

## 1. Introduction

Dacorum 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. The Caravan Sites and Control of Development Act 1960 has now been amended by the Mobile Homes Act 2013. The Mobile Homes Act 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 introduced 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 inspect sites and the Council intends to do annually; this timescale will be reviewed if it becomes apparent that it is appropriate to do so. The Council can charge a fee for different licensing functions, serve enforcement notices and publish any site rules relating to a site. The fee generated by the Mobile Homes Act 2013 is not designed to include investigation of harassment or matters not related to the site licence – these should be dealt with through other appropriate channels.

This policy details what will be charged for each function. Current fees are shown in Table 1 in Annex 2. The table will be updated to reflect the current fees agreed by the Council via the Licensing and Health & Safety Committee. Fees will be reviewed annually ahead of each new fiscal year and from time to time as and when the cost of delivering licensing function is considered to have material changed.

## 2. Fees charged for site licences

The changes introduced by the Mobile Homes Act 2013 for site licensing came 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).

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, 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.

The Council has calculated fees in accordance with the provisions of MHA13 which allows a local authority to include all reasonable costs and this includes administrative costs, officer visits to the site, travel costs, consultations, meetings, undertakings and informal advice.

### 3. Application for a new site licence

All sites require a site licence to operate (subject to exemptions in the Caravan Sites and Control of Development Act 1960); failure to apply for licence is an offence under Section 1(2) of Caravan Sites and Control of Development Act 1960. The Council may only issue a licence for a site with a valid and correct planning permission for the use.

As details of the required planning permission are required as part of a complete application, no application for a site licence will be accepted without this. Sites which have the correct planning permission in place will be processed within 2 months of the licence application.

### 4. Transfer/amendment of existing site licence (including changes to conditions)

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.

Where a site owner requests an amendment to site licence conditions the Council will charge a fee for this function. Applications can be made at any time by licence holders to vary or cancel conditions, but the fee is payable at the application stage. Whether a site visit will be required as part of any variation will be a decision of the Council and an additional fee will apply when this is the case.

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

### 5. Annual Fees for 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 each year, see below for transitional arrangements where annual fees have previously been due in January each calendar year.

Charges are based on estimates from experience associated with the administration responding to enquiries and conducting inspections of sites varying in type and size. The Council is not permitted to make a surplus from this function.

The annual fee covers the costs associated with site inspections to ensure compliance with the site licence conditions and a follow up visit to ensure compliance with any informal schedule of works. If there is still a breach in site licence conditions at the point of the follow up visit further charges may be payable to cover the cost of any enforcement action which may be taken. Further details can be found in section 6 - Enforcement Action.

The fee is calculated using a standard initial fee which covers aspects of an inspection which are expected to be roughly similar in all cases such as travel time for example, the second part of the fee is established on an individual basis a price per licensed pitch to reflect the variation in cost due to the size of the site.

All sites will be inspected annually as it is recognised that any longer than this could lead to site licence breaches not being identified until a significant amount of time has passed.

DCLG guidance offers a variety of suggested options for local authorities in calculating the annual fee and this approach has been adopted as it is considered to offer a balance of transparency and fairness without creating an unnecessarily complicated fee setting process.

### **Transitional arrangement of annual fees payments**

The annual fees for 2019 were payable in January 2019 under the Council's previous fees policy and these cover existing sites until December 2019. As this new policy will come into effect during the 19/20 fiscal year, existing licence holders will receive a pro-rata fee in January to cover the remaining part of 2019/20 (i.e. January – March 2020). Following this, annual fees will become due on 1st April 2020 and will cover the fiscal year from then on.

The fees will be considered annually by the Licensing and Health & Safety Committee and will be published by the Council along with all other fees and charges that the Council makes.

### **Sites exempted from Annual Licensing fees**

- Sites that are not relevant protected sites
- Sites for the Site owner and their family (does not include sites that are run for financial gain)
- Gypsy Roma and Traveller Sites

Following a change of departmental responsibility for Caravan Site licensing in 2018, and the significant policy review that has taken place, together with training that has been required for officers, the cost of this means that fees charged for 2018-2019 will not be sufficient to recover this expenditure, the Council will not seek to recover the costs of this through the deficit process for the 20/21 fees. In future years the Council will continue to assess its previous year's costs to determine if they were accurate. If costs are less than predicted for that year, the excess monies will be reflected in the fee charged to the site owner in the next year. In that case the fee to the site owner would be the licence fee for year 2 minus the money not spent from year 1. If insufficient income was received in a year, consideration of this will be given when the fees are set for the following year, and whether to seek to recover the excess costs of regulating the sites.

### **Charging Arrangements**

For the purpose of this policy the period covered by the annual fee will be 1st April to 31st March each financial year. The fee will be charged to the site owner/licence holder and payment advice will be sent at the start of the financial year with payment due within 30 days. See [transitional arrangements](#) for more information regarding existing licensed sites.

Where a new site licence is issued part way through the year, the annual fee will be pro-rata for that year. The calculation will be done using months and will take into account all months and part-months that the licence will cover for the initial year.

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 will be calculated on a pro-

rata basis for the remainder of the year. The calculation will be done using months and will take into account all months and part-months that the licence will cover for the initial year.

In the event an annual fee is not paid the Council may apply to the First Tier Tribunal (Property Chamber) for an order requiring the licence holder to pay the amount due. Following non-payment of the annual fee, the costs of any litigation and collection of the fee, may be re-charged to the site owner. Charges for collection of the annual fee cannot be passed onto the residents pitch fee.

Applications will not be determined if no fee or a lower fee than required is paid.

Fees for new site applications or variation to site licences will not be refunded if the application is refused. However, if an applicant pays more than the required fee, the additional payment will be refunded in all circumstances.

## 6. Enforcement Action

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 Caravan Sites and Control of Development Act 1960 details the elements which a council 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.

## 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 Mobile Homes Act 2013 changed 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 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 Council 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.

## 8. Publishing and revising the fee policy

This fees policy and the fees charged will be published on the Dacorum Borough Council Licensing website at \*\*\*\*\*

The fees detailed in this policy have been determined based on experience of dealing with site licensing historically.

## Annex 1 Elements included in fee setting

The Council following the Department for Communities and Local Government guidance has sets out the following activities that are included in calculating its fees, 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 document storage and computer systems (including maintenance and upgrade of such systems and the future development e-forms etc)
- updating the website as appropriate;
- processing the licensing fees through BACS, Cheque, e-payment systems
- time for reviewing necessary documents and certificates;
- preparing reports and the holding of committees to determine a licence or the review of policies and conditions of licensing;
- review by manager or lawyers
- review any consultation responses from third parties;
- carrying out any risk assessment process considered necessary
- full site inspection and reports;
- any follow up inspection to monitor compliance as necessary

## Annex 2 Fees Table

Fee	Charge
New Site Licence Application Fee	£414.00 + £7 per unit
Annual Fee	£42 + £7.95 per unit
Deposit/Change of Site Rules	£72
Transfer/amendment of a Site Licence	£222.5 (+£84 if a site visit is required)
Enforcement	Hourly rate of officers involved, plus any other costs such as legal fees.

## Annex 3 – Contact details

For information on this policy, please contact:

**Licensing  
Dacorum Borough Council  
The Forum  
Marlowes  
Hemel Hempstead  
HP1 1DN**

Email: [licensing@dacorum.gov.uk](mailto:licensing@dacorum.gov.uk)

Web: [www.dacorum.gov.uk/licensing](http://www.dacorum.gov.uk/licensing)



To make an application or for further guidance, please visit our website:  
[www.dacorum.gov.uk/licensing](http://www.dacorum.gov.uk/licensing)

For informal advice or queries, please email:  
[licensing@dacorum.gov.uk](mailto:licensing@dacorum.gov.uk)