



## 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> <p><u>Equalities Implications</u></p> <p>None – The impact of the proposals will only affect licence holders, and potential applicants.</p>
Implications:	<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]**