RHONDDA CYNON TAF

RECORD OF DELEGATED OFFICER DECISION

SUBJECT
The implementation of Mobile Homes (Wales) Act 2013 and fee policy in respect of licensable applications within the County Borough of Rhondda Cynon Taf.

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PURPOSE OF ATTACHED REPORT:

The purpose of this report is to inform members of new legislation affecting Residential Caravan Sites within the County and to seek approval to set fees in respect of site licensing and costs in respect of enforcement of site licence conditions.

DELEGATED DECISION (Date):

1. Note the duties of the new legislation
2. Approve the proposed fee structure
3. In accordance with an implied duty to consult, undertake consultation in respect of the proposed fees policy outlined in the report and that the Service Director of Public Health and Protection be delegated authority to consider the results of the consultation and make changes as necessary

Chief Officer Signature	P. J. MEE *Print Name*	2/10/14. *Date*

The decision is taken in accordance with Section 15 of the Local Government Act, 2000 (Executive Functions) and in the terms set out in Section 5 of Part 3 of the Council's Constitution

K. J. Morgan — 2/10/14

CONSULTEE CABINET MEMBER SIGNATURE — **DATE**

2/10/14

OFFICER CONSULTEE SIGNATURE — **DATE**

Directorate:	Public Health and Protection	
Contact Name:	Ian Lester	
Designation:	Senior Environmental Health Officer	
Tel.No.	01443 425375	

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2014/2015: REPORT TO ACCOMPANY DECISION OF THE GROUP DIRECTOR, ENVIRONMENTAL SERVICES

The implementation of Mobile Homes (Wales) Act 2013 and fee policy in respect of licensable applications within the County Borough of Rhondda Cynon Taf.

1. PURPOSE OF REPORT

The purpose of this report is to inform members of new legislation affecting Residential Caravan Sites within the County and to seek approval to set fees in respect of site licensing and costs in respect of enforcement of site licence conditions.

In accordance with the Council's scheme of delegation this report has been prepared to accompany the decision of the Group Director of Environmental Services as described below.

2.0 RECOMMENDATION

It is recommended that Members

- Note the duties of the new legislation
- Approve the proposed fee structure
- In accordance with an implied duty to consult, undertake consultation in respect of the proposed fees policy outlined in the report and that the Service Director of Public Health and Protection be delegated to consider the results of the consultation and make changes as necessary

3.0 BACKGROUND

Under the existing Caravan Sites and Control of Development Act 1960 all residential caravan park owners require a licence from the local authority to operate. Mobile homes are used as permanent homes by an estimated 5,000 residents in Wales, (3,500 homes across 92 sites) and they are often a

popular retirement choice for older people. Rhondda Cynon Taff has 6 such licensed sites with a combined provision for 193 pitches.

Licensing provisions with regards to Residential Caravan sites has remained largely unchanged since 1960 and new legislation was felt to be required because the previous law relating to mobile homes was seen as ineffective and outdated, with malpractice from site owners relatively commonplace. Poor site conditions, stemming from a lack of enforcement and sale blocking the ability of site owners to veto sales were cited as significant problems.

The Mobile Homes (Wales) Act 2013 addresses these problems and is designed to raise standards in the industry so a more professional service is delivered to home owners. The legislation also removes the opportunity for sale blocking by site owners and enables effective enforcement action to be taken against those operators who fail to comply with their licence obligations.

4.0 KEY CHANGES

The new law was introduced as a Private Member Bill by Peter Black AM who set out fourteen key priorities for the Bill. These fourteen provisions form the basis of the Mobile Homes (Wales) 2013 Act

- The requirement for each scheme to have a five year licence subject to a fee.
- A "Fit and proper Person" test applying to the person who manages the regulated site.
- Power of local authorities to appoint an interim manager in cases where a site manager is failing to comply with conditions of site licence.
- Involvement of the Residential Property Tribunal (RPT) in appeals and other determinations.
- Enforcement provisions and the rights for local authorities to act to undertake that work in default if necessary as well as powers of entry.
- The end to the "veto" on sales alongside provisions to ensure the purchaser receives information about the agreement and the site rules ahead of completion.
- Protection of the anonymity of the Residents Association members
- A fixed penalty option for licensing authorities.
- Provisions in relation to operating an unlicensed site, including repayment orders.
- Protection for residents from the passing on to them of any costs incurred as a direct consequence of the Act.
- That pitch fees will henceforth only be increased in line with CPI rather than RPI.
- Protection for the home owner in terms of the movement of their home by the site owner.
- Provision on rights of succession.
- Protection for the mobile home owner to carry out internal improvements.

5.0 IMPLEMENTATION

5.1 Rhondda Cynon Taff County Borough Council currently has 6 licensed Residential Caravan Sites that will now require licensing. In addition to this there is one Council managed gypsy traveller site and 3 showmen sites which are exempt from licensing under the existing licensing regime and new Mobile Homes (Wales) Act 2013.

5.2 The six licensable sites are -

- Pont Pentre, Upper Boat, Pontypridd.
- Pleasant View Park, Trecynon, Aberdare
- Montana Park, Hirwaun Road, Hirwaun, Aberdare.
- Dynea Caravan Site, Dynea Road, Rhydfelin, Pontypridd
- Stable View, Halt Road, Rhigos, Aberdare
- Plots 1 and 2 Llanharry Road, Llanharran, Ponyclun

5.3 The full provisions of the Act are due to come into force on 1st October 2014; this will follow the drafting and consultation of a commencement order that will bring the full provisions of the Act into force, a set of regulations that will bring in new procedures for the sale and gifting of mobile homes, pitch fee reviews and the making of site rules and also amendments to Residential Property Tribunal Regulations.

Schedule 5 of The Mobile Homes (Wales) Act 2013 allows a 6 month transitional period for existing sites already licensed under the Caravan Sites and Control of Development Act 1960 to be relicensed from the new Act coming into force i.e. all existing licensed sites must be relicensed by 1st April 2015 however it is conceivable that applications could be received on or after 1st October 2014 for determination. This initial 6 month transitional period will allow time for change to the new regime and for raising awareness about the changes that will be taking place.

5.4 **REGULATIONS**

The Regulations are as follows:

- Sales and Gifting – The Mobile Homes (Selling and Gifting) (Wales) Regulations 2014 will set out new procedures to make it easier for mobile home owners to sell or gift (give away) their homes without interference from the site owner. These are designed to help potential purchasers of a mobile home as they will have all the information they need to make an informed decision about the purchase.

- Pitch Fee Reviews – The Mobile Homes (Pitch Fees) (Prescribed Form) (Wales) Regulations 2014 setting out the procedures and document which must accompany a pitch fee review notice. It will be designed to provide greater transparency to pitch fee reviews, to help mobile home owners understand the amount that they are being charged and ensure that site owners are not able to add unfair charges onto the pitch fee.

- Site Rules – The Mobile Homes (Site Rules) (Wales) Regulations 2014 will set out procedures for making new, varying or deleting site rules. They will

establish a process for the resolution of disputes arising between site owner and mobile home occupier and require local authorities to keep and publish a register of site rules for sites in their area.

Amendments to Residential Property Tribunal Regulations – amendments will be made to the Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (Wales) Order 2012 and the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012 to bring the RPT within the jurisdiction of the Mobile Homes (Wales) Act 2013

6.0 FEE CHARGES

6.1 Section 6 and 13 of the new Act provide Local Authorities with the power to require a fee when making an application and varying conditions of a site licence.

6.2 Section 36 stipulates that before charging a fee the Local Authority must prepare and publish a Fee policy. When fixing a fee for the purposes of section 6 or 13, the Local Authority –

- must act in accordance with its fee policy
- may fix different fees for different cases or descriptions of cases, and
- may determine that no fee is required to be paid in certain cases or descriptions of case.

6.3 When fixing a fee for any of those purposes the local authority may take into account any costs incurred by it in exercising-

- its licensing function
- any function under any provision of the Act in relation to a site which is not a regulated site

The local authority may revise its fees policy and, where it does so, must publish the policy as revised.

In addition section 52 subsection 11(c) of the Act provides Local Authorities the power to charge a fee for keeping and registering site rules in accordance with the Mobile Homes (Site Rules) (Wales) Regulations 2014 as outlined above.

6.4 The Council will need to note that as this is a discretionary fee, it will increase in line with other Council Fees on an annual basis.

6.5 It is proposed that the fee structure will be calculated as follows:

- a set flat administrative fee for processing the application

- and also, to take account of Officer time to inspect sites of varying sizes, a fee per pitch component will be added to the flat administration fee

because the cost to the Council in terms of Officer time is proportional to the number of pitches on site.

	Flat application fee	£ 698.00
plus	Pitch inspection fee	£ 5.00 per pitch

The Pitch Inspection Fee will consist of the maximum permitted number of pitches granted in the planning permission for the site. No account will be made in respect of empty / vacant pitches, or other under occupation, at the time of site licence application.

It is proposed that small sites with 4 pitches or less, and used exclusively for the owner and their family, and not operated for financial gain are charged the flat rate fee but exempt from pitch fee inspection charges. It is considered unreasonable to charge an inspection fee for these types of sites because experience has shown that they represent a low risk and require little or no enforcement and light touch monitoring.

Discount incentives for initial application and early renewal

It is proposed that an incentive based discount scheme is introduced in respect of site licence renewals. The purpose of the discount is to encourage good practice and early submission of the renewal applications which would prevent unnecessary chasing of applications by the Council. In order to qualify for the £200 discount a duly completed application would need to be submitted within 2 months of the expiry of the current licence. A further £50 renewal discount would be deducted from the fee if 2 or more of the following criteria can be met:

- Licence Holder / Site is accredited with a recognised organisation / Professional body
- No Enforcement action has been required over the period of the last licence
- Site is fully compliant with the Model Standards
- No complaints have been received from the site residents during the course of the previous licence.

6.6 Transfer/Amendment of existing site licence

The Council may also apply a fee to vary an existing site licence. The site licence may be varied upon the request of the licence holder or by the Council if there is a change in circumstances. It is proposed that the application fee for variation of a site licence is a set £50 fee. If the Council deems it necessary to alter site licence conditions to take account of new Welsh Assembly Government Model Standards for Residential Caravan Sites, there will be no fee payable from the licence holder.

6.7 Fees for lodging site rules

In accordance with the Mobile Homes (site Rules) (Wales) Regulations 2014 site owners are required to review existing and consult with residents in respect of proposed site rules. Once agreed with the residents the site owner is required to lodge the site rules with the Council. The Council needs to approve and register the rules. The Council will also be required to publish the list of site rules on the Council's website.

It is proposed that a set fee of £40 is made for depositing, varying and deleting site rules. If the park owner has completed an inadequate consultation process, it is proposed that a new fee for depositing of site rules must be paid by the park owner to cover the Council's costs.

6.8 PROPOSED FEES POLICY

Appendix 2 outlines the proposed fee policy. Whilst there is no statutory duty to consult there is an implied duty to do so, as part of the Council's duty to act fairly. Therefore the Council intends to consult with Park Home owners and residents of existing sites in relation to the proposed fee policy.

The Consultation period will last 21 days to allow persons consulted the opportunity to consider and respond to the proposal. The results of the consultation together with Officer recommendations will be further considered and the fee structure for 2014/2015 agreed. The fees policy for licensing residential mobile homes will be published on the Council website and the fee policy reviewed on an annual basis in line with other discretionary Council fees.

6.9 ENFORCEMENT CHARGES

Fixed Penalty Notices

Section 6 of the Mobile Homes (Wales) Act 2013 allows the Council discretion to issue Fixed Penalty Notices (FPN) to discharge certain minor breaches of site licence conditions. Fixed Penalty Notices must not exceed level 1 on the standard Scale of fines. A fixed penalty notice could be used by the Council to deal with minor infringements such matter as:

- failure to remove litter
- non compliance with site rules
- poor provision of adequate lighting around the site

The processes involved in the service of Mobile Home FPN's are going to be very similar to those involved in the service of Fixed Penalty Notices issued by the Council for littering offences in accordance with the Clean Neighbourhoods and Environment Act 2005. The Council currently impose a £75 Fixed Penalty Notice in respect of a littering misdemeanour and therefore the charge for Mobile Home Fixed Penalty Notices will mirror this charge at £75.

Compliance Notices

Section 17 of the Mobile Homes (Wales) Act 2013 allows the Council discretion to serve compliance notices on site owners where site licence conditions are breached. Such notices will set out what the site owner needs to do to correct the breaches and the timescales. Failure to comply with the notice would be a criminal offence, punishable by a fine and the site licence could be revoked upon a third or more subsequent prosecutions (section 18). Following a successful prosecution for breaching a compliance notice, the Council would be able to serve notice to enter the site and carry out the necessary works (Works in default)

In addition to this, Section 21 of the Act allows a notice to be served on site owners enabling the Council to enter the site and carry out emergency work where there is an imminent risk of serious harm.

The cost of deciding whether to take action, preparing and serving compliance and/or emergency action notices can be recovered (Section 19 and 22 respectively). The total expenses the local authority seeks to recover (the relevant expenses) can include, but not limited to:

- Expert advice (including legal advice)
- Inspection costs
- Administration costs in serving notice

The costs of issue of a compliance notice, will be a minimum set fee of £150. Expert advice and other costs associated specifically with an individual case will also be chargeable on a case by case basis. A detailed breakdown of the relevant expenses will be outlined in the demand which will accompany the payment.

In accordance with section 25 of the Act, the Council reserves the right to charge interest at a rate of 5% above the Bank of England Base rate to all outstanding operative demands in respect of Compliance or Emergency Action Notices.

The relevant expenses and any accrued interest are, until recovered, a legal land charge.

Appendix 1

Proposed Charges and Fees for Residential Mobile Homes 2014/2015

Set Application Fee	**£698.58**
+ Pitch Inspection Fee **(4 pitches or less exempt)**	**£5.00 per pitch**
Early submission discount	**£200**
Additional good practice/compliance Discount	**£50**
Licence variation	**£50**
Lodging Site Rules	**£40**
Fixed Penalty Notice	**£75**
Compliance Notice	**£150 plus expert/other advice on a case by case basis. Interest to be applied on all outstanding operative demands at a rate of 5% above the bank Of England Base Rate**

Appendix 2

STRONG HERITAGE | STRONG FUTURE

RHONDDA CYNON TAF

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Draft Fees Policy for Licensing Residential Park Home Sites

Rhondda Cynon Taff County Borough Council
September 2014

Introduction

In accordance with the Mobile Homes (Wales) Act 2013, Rhondda Cynon Taff County Borough Council ("the Council) has powers to issue licenses in respect of "relevant protected sites 2 and to charge fees for the provision of such licensing functions. A relevant protected site relates to all park home sites that are used for permanent residential use.

Local authority owned sites and sites used by Travelling Showmen are not considered as protected sites.

Council's can charge:

- a licence fee for applications to grant or transfer a licence or an application to alter the conditions on a licence and ;
- a fee for keeping and registering site rules

Before Official publication of the Fees Policy, the Council will consult with Park Home owners and Managers of existing sites in relation to the proposed fee policy.
When determining a fee the Council:

- must act in accordance with their fee policy
- may fix different fees for different cases or description of cases, and
- may determine that no fee is required to be paid in certain cases

Any fees charged must fairly cover the costs (or part of the costs) incurred by the Council under its functions in Part 1 of the Act , other than the costs of enforcement action.

The licensing fee structure

In calculating its fee structure, the Council will calculate its fees in accordance with the provisions of the Mobile Homes (Wales) Act 2013 which allows the Council to include all its reasonable costs and this includes administration costs, Officer visits to the site, travel costs, consultations, meetings, undertakings and informal advice.

The Council will determine its fee structure based on the cost of administering the application and also the size of the site because the work involved in determining an application for a larger site is greater than a smaller site.

Application licence fee

6.7 The fee structure is calculated as follows:

- a set flat administrative fee for processing the application
- and also, to take account of Officer time to inspect sites of varying sizes, a fee per pitch component will be added to the flat administration fee because the cost to the Council in terms of Officer time is proportional to the number of pitches on site.

	Flat application fee	£ 698.00
plus	Pitch inspection fee	£ 5.00 per pitch

It is proposed that small sites with 4 pitches or less, and used exclusively for the owner and their family, and not operated for financial gain are charged the flat rate fee but exempt from pitch fee inspection charges. It is considered unreasonable to charge an inspection fee for these types of sites because experience has shown that they represent a low risk and require little or no enforcement and light touch monitoring.

Discount incentives for site licence renewal

It is proposed that an incentive based discount scheme is introduced in respect of site licence renewals. The purpose of the discount is to encourage good practice and early submission of the renewal applications which would prevent unnecessary chasing of applications by the Council. In order to qualify for the £200 discount a duly completed application would need to be submitted within 2 months of the expiry of the current licence. A further £50 renewal discount would be deducted from the fee if 2 or more of the following criteria can be met:

- Licence Holder / Site is accredited with a recognised organisation / Professional body
- No Enforcement action has been required over the period of the last licence
- Site is fully compliant with the Model Standards
- No complaints have been received from the site residents during the course of the previous licence.

Fees in respect of varying a Site Licence

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 conditions, the Council will charge a fee for this function. The application fee for variation of a site licence is £50. If the Council deems it necessary to alter conditions to take account of new Model Standards for Residential Caravan Sites, there will be no fee payable from the licence holder.

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 (Wales) Act 2013 changes the way site rules must be agreed. The Council must keep an up to date register of site rules and publish the rules on the Council's website. Before lodging the rules, the Council will need to ensure the rules have been made in accordance with the statutory procedure.

The Council will charge a set fee of £40 for depositing site rules. If the park owner has completed an inadequate consultation process, a new depositing of site rules fee must be paid by the park owner to cover the Council's cost.

Enforcement Charges

Fixed Penalty Notices

Section 6 of the Mobile Homes (Wales) Act 2013 allows Councils to issue Fixed Penalty Notices (FPN) to discharge certain minor breaches of site licence conditions. Fixed Penalty Notices must not exceed level 1 on the standard Scale of fines. A fixed penalty notice could be used by the Council to deal with minor infringements such matter as:

- failure to remove litter
- non compliance with site rules
- poor provision of adequate lighting around the site

The processes involved in the service of Mobile Home FPN's are going to be very similar to those involved in the service of Fixed Penalty Notices issued by the Council for littering offences in accordance with the Clean Neighbourhoods and Environment Act 2005. The Council currently impose a £75 Fixed Penalty Notice in respect of a littering misdemeanour and therefore the charge for Mobile Home Fixed Penalty Notices will mirror this charge at £75.

Charges for Compliance Notices and Works in default

Section 17 of the Mobile Homes (Wales) Act 2013 allows the Council discretion to serve compliance notices on site owners where site licence conditions are breached. Such notices will set out what the site owner needs to do to correct the breaches and the timescales. Failure to comply with the notice would be a criminal offence, punishable by a fine and the site licence could be revoked upon a third or more subsequent prosecutions (section 18). Following a successful prosecution for breaching a compliance notice, the Council would be able to serve notice to enter the site and carry out the necessary works (Works in default)

In addition to this, Section 21 of the Act allows a notice to be served on site owners enabling the Council to enter the site and carry out emergency work where there is an imminent risk of serious harm.

The cost of deciding whether to take action, preparing and serving compliance and/or emergency action notices can be recovered (Section 19 and 22 respectively). The total expenses the local authority seeks to recover (the relevant expenses) can include, but not limited to:

- Expert advice (including legal advice)
- Inspection costs
- Administration costs in serving notice

The costs of issue of a compliance notice, will be a minimum set fee of £150. Expert advice and other costs associated specifically with an individual case will also be chargeable on a case by case basis. A detailed breakdown of the relevant expenses will be outlined in the demand which will accompany the payment.

The relevant expenses and any accrued interest are, until recovered, a legal land charge.

Works in default will be carried out in accordance with the Departments Works in Default procedure having regard to the Council's Corporate Enforcement Policy.

Publishing the fee policy

The fee policy for licensing of residential park home sites will be published on the Council's website. If the Council revises its fee policy , it will replace the published policy with the revised policy. There will also be a hard copy of the Fees Policy kept with the Housing Strategy and Standards Team , Ty Elai, Dinas Isaf East, Williamstown, Tonypandy CF40 1NY Tel No 01443 425001

How the fees are to be paid

The Council requires all fees to be included with any application for a new site licence, for amending a site licence or for transferring a site licence.

Review of the fee structure

A review of the fee structure will be carried out annually and revised in line with other Council Fees. Any adjustments will take into account variations in actual officer and administration time and any changes to officer hourly rates, mileage costs or any other associated costs in providing the licensing function .