

Report to Housing Scrutiny Panel

Date of meeting: 8th September 2010

Portfolio: Housing – Cllr D. Stallan

**Subject: Review of Proposed New Licence
Conditions for Permanent Residential Park Home
Sites**



Officer contact for further information:

Alan Hall – Director of Housing (01992 564004)

Committee Secretary: Mark Jenkins (01992 56 4607)

Recommendations/Decisions Required:

(1) That the following licence conditions proposed by the Cabinet, that differ from the Model Standards 2008, be supported (Paras 20 to 22);

- (a) Dimensions of porches to be restricted to the sizes set out in the Model Standards, but that a door be allowed to both the porch and the home, provided that a mains smoke detector is installed; and**
- (b) A requirement for the Council's domestic waste facilities to be used for domestic waste, and commercial waste facilities to be used for waste from common parts;**

(2) That, in accordance with the request from the Overview and Scrutiny Committee, the Scrutiny Panel considers recommendations that should be made to the Cabinet on the other proposed licence conditions that should be applied to new and existing permanent residential park homes within the District, having regard to the CLG's Model Standards 2008 and the advice of the Fire Authority and, in particular, whether or not:

- (a) The consultation undertaken by officers with site owners, residents and members (Paras 25 to 28) was appropriate under the circumstances;**
- (b) The same site licence conditions should apply to both new (and substantially developed) and existing park home sites (Paras 29 to 50);**
- (c) New and/or existing park homes should be allowed to be located within 3 metres from a site boundary (Paras 51 to 54);**
- (d) There should be a maximum height allowable for trees/hedges and combustible fences on new and/or existing sites (Paras 55 to 68) and, if so:
 - (i) Whether that maximum height should be 1 or 2 metres, and**
 - (ii) The timescales that site owners and existing residents should be given to comply with the new licence conditions;****

(e) There should be a minimum distance between the edges of hedges and park homes within the separation space and, if there should, what that minimum distance should be (Paras 69 to 73);

(f) Combustible sheds should be allowed between park homes, within the separation space, and if not, the timescale that site owners and existing residents should be given to comply with the licence condition (Paras 74 to 88);

(g) Existing separation distances between park homes of less than the required 6 metres should be allowed to continue and, if so, for how long (Paras 90 to 100);

(h) There should be a minimum distance between park homes and any roads within the site and, if there should, what that minimum distance should be (Paras 101 to 105); and

(i) The Scrutiny Panel has any other suggested additions, amendments or omissions to the Cabinet's proposed set of licence conditions;

(3) That the proposed licence conditions (set out at Para 112) that do not apply to park home sites that comprise only one park home are excluded from the site licences for those sites (Paras 111 & 112);

(4) That all residents and site owners be consulted on both the licence conditions proposed by the Cabinet and the Scrutiny Panel's recommendations (and that they also be provided with copies of this report to the Housing Scrutiny Panel and Annex 1 (only) for their information), and that the results of the consultation exercise be reported to the Cabinet at the same time as the Scrutiny Panel's recommendations; and

(5) That site owners and park home owners whose homes have a separation distance between park homes of less than 6 metres are specifically consulted on the Scrutiny Panel's recommendations on the approach to be taken to the contravention of separation spaces, as recommended by the Model Standards 2008.

(a) Introduction

1. At its meeting held on 7 June 2010, the Cabinet agreed the recommendations of the Housing Portfolio Holder to introduce new licence conditions for permanent residential park home (mobile home) sites throughout the District. Two aspects of this decision were called-in by 5 members, for review by the Overview and Scrutiny Committee. The Committee met on 12th July 2010 and considered the Call-in. The Committee agreed to refer the two issues back to the Cabinet for further consideration. The Committee also agreed a suggestion from the Housing Portfolio Holder that, in the meantime, the Housing Scrutiny Panel be requested to undertake a detailed review of all the proposals, and to make recommendations to the Cabinet on the way forward.

2. As requested by the Scrutiny Panel at its last meeting, this report has been produced and provided to members, site owners and Lead Petitioners (see later) earlier than normal, in order to allow them sufficient time to consider the detailed issues set out in the report. This detailed and comprehensive report:

- Provides a detailed background to the issues and the deliberations to date;
- Identifies the main issues of concern;
- Identifies other issues that are also likely to be of concern to residents;
- Proposes available options on the areas of concern;
- Provides officers' and the Fire Officer's comments on the options;

- Considers licence conditions that could be excluded from licences for sites that only comprise one park home;
- Makes reference to the CLG's proposed reforms to park home licensing; and
- Asks the Scrutiny Panel to make recommendations to the Cabinet on the way forward.

3. In view of the extent of the concerns raised and the numerous representations that have been received, and in order to ensure that members of the Housing Scrutiny Panel are fully aware of the views of all parties, the following have been invited to attend this Housing Scrutiny Panel meeting to each give a short (maximum 3 minutes) presentation to the Scrutiny Panel before it debates the issues:

- All site owners/lessees;
- Lead petitioners from park home sites; and
- Representatives of known park home residents associations (where petitions have not been received).

4. Assistant Divisional Officer Stuart McMillan from Essex Fire and Rescue Service will also be in attendance at the meeting to provide the views of the Fire Authority and to answer members' queries on issues relating to fire safety.

5. It is suggested that the following order of business be followed for the meeting:

- (a) Presentation of the officers' report by the Director of Housing
- (b) (Only) questions from members of the Scrutiny Panel at appropriate pauses during the Director of Housing's presentation
- (c) Comments by the Assistant Divisional Fire Officer
- (d) Oral submission of views by the Lead Petitioners, representatives of other known residents association and site owners/lessees (maximum 3 minutes each).
- (e) Any further questions from members of the Scrutiny Panel to officers and the Assistant Divisional Officer
- (f) Debate of the issues by the Scrutiny Panel
- (g) Consideration and agreement by the Scrutiny Panel on recommendations to be made to the Cabinet

6. In view of the number of issues to be considered by the Scrutiny Panel, it may be necessary for more than one meeting of the Scrutiny Panel to be held. A list of all the Annexes and appendices to this report is provided for reference at the end of the report.

(b) Background and deliberations to date

Cabinet Meeting – 7th June 2010

7. At its meeting on the 7th June 2010, the Housing Portfolio Holder presented a report to the Cabinet on proposed new licence conditions for all new and existing permanent residential park home sites within the District, following the introduction of new Mobile Standards for park home sites produced by the Government's Department of Communities and Local Government in 2008, and in view of the fact that the Council's existing licence conditions have not been updated for many years, and many existing sets of licence conditions differ between existing sites, due to them being produced at different times over the years.

8. To avoid duplication of information, the Housing Portfolio Holder's report to the Cabinet is attached as Annex 1, and all members are asked to read this report, since it gives important information. Members are particularly asked to note the statutory consultation requirements for amending site licences (set out in Paragraph 5 of the Cabinet Report) and

the proposed differences between the CLG's Model Standards and the Council's proposed site licence conditions, and the reasons (set out within the Table at Paragraph 10 of the Cabinet Report – See also Paras 20 – 22 below).

9. Attached to Annex 1 are:

Appendix 1 - An example of a typical set of existing licence conditions; and

Appendix 2 - The proposed new standard licence conditions for new and existing park home sites within the District.

10. The Cabinet agreed that the new licence conditions should be adopted, and also made the following additional decisions:

- (a) The deadline for removing combustible sheds and reducing the height of hedges / trees to no more than one metre within separation spaces should be set at six months;
- (b) The deadline for reducing the height of fences to no more than one metre within separation spaces should be set at three years;
- (c) That all residents of permanent residential sites within the District should be informed of the new conditions by letter;
- (d) That financial assistance in the form of the Council's Handyperson Service and the Small Loans Scheme be made available to residents that qualify, to assist them in complying with the conditions relating to the removal or replacement of sheds, fences and hedges;
- (e) That, subject to another consultation exercise, site licence conditions based on these standard site licence conditions be also applied to Gypsy & Traveller sites which have planning permission as permanent residential caravan sites; and
- (f) That, in due course, the intention to similarly licence holiday caravan sites in accordance with the relevant model standards should be noted.

Call-in to the Overview and Scrutiny Committee and issues arising in the intervening period

11. Following this decision being made by the Cabinet, in accordance with the Council's Constitution, Cllr Mrs E. Webster and four other members called-in the decision for further consideration by the Overview and Scrutiny Committee. A copy of the Call-in is attached as Annex 2.

12. As can be seen, there were two specific issues called-in, relating to:

- (a) Insufficient consultation with residents and ward members; and
- (b) Insufficient consideration of the impact on the privacy of residents by lowering hedges and fences to 1 metre, and requesting existing hedges/fences to remain at a maximum of 2 metres

13. In the intervening period, leading up to the Overview and Scrutiny Committee, the following was received, raising concerns about the proposed new site licence conditions:

- 5 petitions, comprising around 300 signatures, and accompanying letters from the residents of five park home sites (Annex 5);

- A letter from the Chairman of Roydon Mill Residents Association (Annex 5); and
- A letter from Roydon Parish Council (Annex 6).

14. In addition, 53 letters were received by the Council (officers, Leader and Housing Portfolio Holder), raising concerns about the proposed new site licence conditions. Twenty eight of these letters were standard template letters, each signed by individual residents of Roydon Mill Park Home Site.

Overview and Scrutiny Committee – 12th July 2010

15. At the Overview & Scrutiny Committee, Cllr Mrs Webster (as the Lead Member for the Call-in) explained the reasons for calling—in the two issues relating to the Cabinet’s decision. Cllr David Stallan, Housing Portfolio Holder, explained the reasons for the Cabinet’s decision. In so doing, he referred to the following two Supplementary Reports prepared by officers for the Overview and Scrutiny Committee, which are provided as annexes to this report:

- (a) Annex 3 Provision of additional information in view of comments made at the Cabinet meeting, in relation to the consultation process. It had been suggested that the Council had not undertaken the consultation process properly. However, the report explained that the consultation had been properly undertaken, in accordance with the requirements of the Caravan Sites and Control of Development Act 1960 and that, in addition, representatives of known park home residents associations had also been consulted, which is not required by the Act. The Report also gave details of precisely who was consulted, and other information in relation to the consultation process.
- (b) Annex 4 Provision of an Information Paper produced by the Building Research Establishment (BRE) in 1991 entitled “*Fire spread between caravans*”, which had been referred to at the Cabinet meeting. The Information Paper describes work carried out to examine the spacing distance required to prevent the spread of fire between park homes (and holiday caravans), and the outcome of ignitability tests conducted on samples of caravan material and of fire tests on one complete park home and one complete holiday caravan. Factors taken into consideration were the construction materials, combustible items kept near the caravans and fire screens.

From these tests, the BRE concluded, amongst other things, that:

- (i) There should be no change to the Model Standards’ 6 metre spacing requirement for current designs of park homes; and
- (ii) It must be presumed that any items (other than those classified as non-combustible) within 3 metres of a burning caravan could ignite and be an additional source of fuel and radiation or, indeed, direct flame impingement. However, the BRE accepted that certain items need to be located between homes for practical reasons. Therefore the BRE recommended that no combustible intermediate item should be located within 3 metres of an adjoining home (i.e. there should be 3 m clear space between separate occupancies), except as specified in the Table provided within the Information Paper. The Table states that, amongst other things, only low (maximum of 1 metre high) picket fences should be allowed.

16. The five Lead Petitioners were also invited to give their views orally at the meeting on the issues called-in (for up to a maximum of 3 minutes each). Assistant Divisional Officer Stuart McMillan from Essex Fire and Rescue Service answered members' questions relating to fire safety.

17. Over 200 park home residents attended the Overview and Scrutiny Committee meeting to listen to the debate.

18. After considering the issues, the Committee resolved that the decision should be referred back to the Cabinet for further consideration. Although only two issues relating to the Cabinet's decision were called-in, the debate often covered other issues relating to the proposed licence conditions. For this reason, the Committee agreed the Housing Portfolio Holder's suggestion that the Housing Scrutiny Panel be asked to consider all the relevant issues in depth and make suitable recommendations to the Cabinet.

19. The relevant extract from the minutes of the Overview and Scrutiny Committee, giving more detailed information about the debate, is attached as Annex 7.

(c) Departures from the Model Standards previously agreed by the Cabinet

20. As explained at Para 8 above, the report to the Cabinet on the 7th June 2010 included a table, setting out recommended changes to the Model Standards 2008 that officers felt should be made for the Council's new licence conditions. Two of these proposed changes related to sheds and hedges/fences, which are discussed in detail later in this report. However, the other two changes related to porches and waste facilities; it is suggested that the Scrutiny Panel recommends to the Cabinet that these proposed departures from the Model Standards remain.

Porches

21. The Model Standards 2008 provide maximum dimensions for porches, and require that only one door to either the porch **or** the main home should be allowed. It was suggested to the Cabinet that whilst porches should be restricted to the sizes set out in the Model Standards, the Council should allow a door to be allowed to both the porch **and** the home if the residents wanted, provided that a mains smoke detector is installed. This was suggested on the basis that it would provide improved thermal efficiency.

Waste facilities

22. The Model Standards 2008 only require communal refuse bins to be provided and housed within a properly constructed bin store, and that all refuse disposal should be in accordance with current legislation and regulations. It was suggested to the Cabinet that the Council's licence conditions should require the Council's domestic waste facilities to be used for domestic waste, and commercial waste facilities to be used for waste from common parts.

(d) Residents' main concerns

23. Having considered the concerns raised in the petitions and letters received, and the views put forward orally by the Lead Petitioners at the Overview and Scrutiny Committee, it appears that residents have 5 main concerns relating to the Cabinet's decision, as follows:

- There was insufficient consultation;
- The appropriateness of applying the CLG's Model Standards to existing sites;
- The requirement that existing park homes must be located no less than 3 metres from a site boundary;

- The height of a dividing combustible (e.g. wooden) fence and/or hedge must be no more than 1 metre, and that the edges of hedges must be at least 3 metres from a park home; and
- No combustible sheds must be located in the separation space between park homes.

24. These issues are considered in detail below, together with options for the way forward for consideration by the Scrutiny Panel.

(e) Consultation

25. A number of residents and members have expressed the view that there has been insufficient consultation on the proposed introduction of new licence conditions; indeed the Call-in referred to this, including a suggestion that ward members had not been consulted.

26. Both the report to the Cabinet on the 7th June 2010 (Annex 1) and one of the Supplementary Reports to the Overview and Scrutiny Committee (Annex 3) provided information on the consultation process that was undertaken. This consultation, and the consultation with members, can be summarised as follows:

- The statutory requirement only requires site owners and agencies listed in the Caravan Sites and Control of Development Act 1960 to be consulted. Officers went further than statutorily required, and also consulted known park home residents associations. Around 500 (60%) of the 835 park homes in the District are represented by residents associations. Therefore, officers took the view that, by consulting all the known residents associations on the proposals, they would then consult their resident members and respond to the Council with any concerns. Very little response was received.
- All Members of Council were advised in the Council Bulletin, dated 27th February 2009, that officers would be updating the Council's site licences and that (only) site owners, park home residents associations and other interested parties would be consulted on the proposals. The article stated the other parties that would be consulted. It further explained that the proposed licence conditions would be based on the Model Standards 2008, but may also include some minor variations, and that the proposed licences would be presented to members (i.e. the Cabinet) following the consultation exercise and before the new licences are issued. Two officer contact names were provided if members wanted further information. Very limited information was sought, from a couple of members.
- In November 2009, the Housing Portfolio Holder presented a report to the Cabinet which explained that, following the implementation of the Council's Private Sector Housing Renewal Strategy, the Government had updated its standards for mobile homes sites and that, as licences for the sites in the District had not been re-issued for a number of years, it would now be necessary to issue new licences. The report explained that, as well as requiring a significant staff resource in the short term to create and issue the licences, there would also be an ongoing need to ensure that the conditions attached to the licences were complied with. It explained that this could not be achieved within existing staff resources and, in response, the Cabinet agreed to create a new part-time temporary post to undertake this work. No concerns were raised about the potential impact of enforcing the new conditions when this new post was agreed.

27. It is officers' view that not only was the statutory consultation requirement met, under the circumstances, the level and approach of the consultation was appropriate at the time and that, bearing in mind the limited response that was received, there was no need to

consult all residents. However, it is also accepted that, following the Cabinet's decision, there is now widespread concern about the proposals and that wider consultation is now appropriate, which is proposed following the Scrutiny Panel's deliberations (see Paras 115 – 116 later in this report).

28. The Scrutiny Panel is invited to provide its views on whether or not the level of consultation by officers was appropriate under the circumstances.

(f) Application of Model Standards to existing sites

29. A number of representations have been received from residents suggesting that it is unlawful (and contrary to Article 7 of the Human Rights Act) to apply new site licence conditions "retrospectively" and that a "4 Year Rule" applies. Article 7 states that no-one shall be held guilty of any criminal offence on account of any act or omission, which did not constitute a criminal offence under national or international law at the time when it was committed. The Director of Corporate Support Services (DCSS) has considered this issue and has advised that:

- She believes the "4 Year Rule" referred to by residents may relate to the immunity from planning enforcement under planning legislation for building works. However, she advises that this does not override site licence requirements, which are covered by separate legislation (Caravan Sites and Control of Development Act 1960).
- Acts or omissions prior to any change in site conditions are not affected. However, failure to comply with any future requirement will be a breach. Put simply, it is not – for example - the erection of a fence which contravenes, it is a subsequent failure to comply with a requirement to reduce it. It is quite possible for standards and laws to change, that require people to comply to the new standard/law. The DCSS cites an example: the High Hedges legislation whereby a 10 metre Leylandii hedge planted many years ago, which was not unlawful prior to the legislation being introduced, became potentially unlawful after its introduction. Therefore, Article 7 of the Human Rights Act is not engaged.

30. A more relevant issue is that many residents have commented that, although the CLG's Model Standards may be appropriate for **new** park home sites, which can be provided having regard to the Model Conditions from the outset, they should not be applied in their totality to **existing** park home sites, and that different conditions should apply to existing sites, having regard to the current situation and the impact on existing residents.

31. Firstly, it is important to note that, under the Caravan Sites and Control of Development Act 1960, when attaching or varying any conditions of a site licence, the Council **must**;

- Have regard to any Model Standards when deciding what, if any, conditions to attach; and
- Consult the Fire Authority on the fire precaution conditions.

32. The duty to have regard to the Model Standards is subject to any advice given by the Fire Authority, including what conditions relating to fire precautions would be appropriate, if the Model Standards were thought to be inappropriate.

33. However, the Model Standards 2008, on which the proposed site licences are based does also state that:

- These standards should be considered when applying licence conditions to **new** sites and sites that have been substantially developed;

- When considering variations to **existing** site licences, councils “*should consider whether it is appropriate for these standards to apply*”;
- “*Where a current licence condition is adequate in serving its purpose, the authority should not normally apply the new standard*”;
- “*Where it is appropriate to apply the new standard to a condition, the local authority should be able to justify its reasons for doing so, having regard to all the relevant circumstances of the site*”; and
- “*In deciding whether to apply a new standard, the local authority must have regard to the benefit that the standard will achieve and the interests of both residents and site owners (including the cost of complying with the new or altered condition)*”.

34. At the Overview and Scrutiny Committee, some residents referred to the actions of other local authorities and that some had decided not to adopt the Model Standards 2008. Officers have therefore undertaken a telephone survey of the approach taken to this issue by all the 13 other local authorities in Essex.

35. A full response was received and the outcome of this survey is as follows:

Have no park homes in the District	3
Model Standards currently in use:	
Model Standards 1989	8
Model Standards 2008	1
Information not provided	1
The Model Standards 1989 are currently used, but the Model Standards 2008 are being considered for both existing and new sites	2
The Model Standards 1989 are currently used, but site owners have been advised to comply with the Model Standards 2008 informally and the Model Standards 2008 are being considered for new sites	1

36. Although, in the event of a challenge or legal action against the Council in future, it would be no defence for the Council to say that it had simply had regard to the approaches adopted by other local authorities (since it is this Council’s legal duty to have regard to the Model Standards 2008, irrespective of the approach taken by other councils) the Scrutiny Panel may find the above information useful in its deliberations.

Option 1 – Apply the same site licence conditions to both new and existing park home sites

37. This is the Cabinet’s original decision, for the reasons set out by the Housing Portfolio Holder in the Cabinet report, and is based on the fact that the Council must have regard to the Model Standards and the views of the Fire Authority and that, as stated in the Model Standards:

“the Model Standards represent those standards normally to be expected as a matter of good practice on caravan sites”.

38. It also takes account of the views of the Fire Authority, that it would not recommend any deviation from the Model Standards, which in themselves have regard to research, including the BRE’s Information Paper on *“Fire spread between caravans”*.

39. However the cost, officer time and work that would be involved with enforcing the conditions should not be underestimated, especially if residents are resistant and it is necessary to resort to legal action. It should also be noted that many residents have raised concerns about their (and the site owners’) ability to comply with all the standards on existing sites.

Option 2 – Apply the Model Standards to new or substantially developed park home sites, but apply different licence conditions to existing sites, having regard to the concerns raised by residents

40. Such an approach would enable the Council to include most of the Model Standards within the licence conditions of existing sites, but exclude or change one or more of the conditions about which residents have raised concerns (and are discussed in more detail later in this report).

41. Members could take such an approach if they felt, having regard to the Model Standards and the views of the Fire Authority;

- The current licence condition(s) is/are adequate in serving its/their purpose and the new standard should not, therefore, be applied;
- Having regard to all the circumstances of the site, the Council is not able to justify reasons for varying some or all of the “contentious” licence conditions, after taking account of the representations made by existing residents; and/or
- The benefits that the new licence condition(s) would achieve (by complying with the Model Standards) are outweighed by the interests of existing residents and site owners, having regard to the substantial representations made.

Option 3 – Apply the Model Standards to new or substantially developed park home sites, but apply different licence conditions to existing sites, having regard to the concerns raised by residents, until such time as the park home is replaced

42. Such an approach would seek to apply the Model Standards on existing sites in the very long term, without affecting existing residents unduly.

43. However, this approach is not recommended, for two reasons. Firstly, it would result in different residents (i.e. those on existing and new sites) being treated in different ways, which is not considered equitable. It would also be difficult to enforce (and would be reliant on the site owner keeping the Council informed of park home removals and replacement) and could have an effect on existing residents’ ability to sell their park home. If the condition that park homes must be located no less than 3m from a site boundary (see Paras 51-54 below) was enforced, it would be necessary for either the site owner of the new park home or the resident to physically move the park home, which would be very difficult.

44. Secondly, if the licence condition requirement becomes an issue when the park home is in the process of being sold, it can be deemed as a condition imposed on the sale of the park home by the site owner, which would be contrary to the Mobile Homes Act 1983. This would have the potential to seriously compromise a site owner who would, in effect, be caught between this provision of the Mobile Home Act 1983 and the requirements of the site

licence.

Option 4 – Do not apply the Model Standards to new or substantially developed park home sites

45. It is felt difficult to justify why the Model Standards should not apply to new sites, since they are accepted good practice and there are unlikely to be any justifiable reasons for not being applied.

Option 5 – Do not adopt the Model Standards 2008 (at all) for either existing or new sites

46. This is not considered appropriate since it would result in the Council not amending its site licence conditions for many years, despite two sets of Model Standards being published by the Government in the meantime. Moreover, it should also be noted that it is necessary for the Council, in any event, to revise all its existing site licences (where there is more than one park home situated on the site) in order to take into account the requirements of the Regulatory Reform (Fire Safety) Order 2005, which was introduced after all the existing site licences were issued by the Council.

Officers' comments

47. The Council's DCSS advises that, although it is the Council's decision which, if any, conditions to attach to or vary existing site licences, having regard to the Caravan Sites and Control of Development Act 1960, it would require compelling reasons to depart from the professional advice of the Fire Authority, whose officer advises that the 2008 Model Standards should be adopted.

48. Consequently, it is officers' view that the licence conditions for both new and existing park home sites should, wherever possible and practical, be the same and that, wherever possible, they should be the same as the Model Standards, with the exception of the proposed differences set out at Paras 21 & 22 above.

49. However, officers also acknowledge the strength of feeling amongst existing residents, and the difficulties that residents would be caused, and the associated cost, if some or all of the conditions that have raised concerns amongst residents, are applied to existing sites. Officers are also concerned about the practicalities of enforcing the conditions that have raised concerns, bearing in mind the huge number of contraventions that would apply across all of the sites, and the costs, officer time and work that would be involved.

50. Therefore, officers accept that members may conclude that different standard licence conditions should apply to all new and all existing sites, with the licence conditions for existing sites departing from the Model Standards in respect of some conditions, for the reasons given in Paragraph 41 above, provided that members feel that they have had due regard to both the Model Standards and the advice of the Fire Authority. It should be noted that, to ensure consistency, officers believe strongly that **all** existing sites should have the same set of licence conditions (except sites with just one park home – see Paras 111 & 112 below); there is no reason why existing sites cannot have the same licence conditions.

(g) Distance of park homes from site boundaries

51. The Model Standards 2008 state that park homes should not be located less than 3 metres from a site boundary. The Explanatory Notes to the Model Standards state that:

“The 3 metre separation distance inside the boundary serves the purpose of ensuring privacy from whatever is on the other side of the boundary, such as a road, and other developments, such as houses”.

52. This condition is therefore for the sole benefit of park home residents (presumably to deter site owners from locating park homes close to boundaries – perhaps to maximise the number of homes that can be provided on the site - and affecting the residents' privacy). There does not appear to be any reasons for this condition relating to fire safety.

53. It appears that members therefore have two options in relation to this condition – **the condition can either be:**

(a) Included within the site licences for existing sites; or

(b) Excluded from the site licences for existing sites, on the basis that:

- ***It would be difficult to enforce (since a number of existing park homes are currently located within 3 metres of the site boundary); and***
- ***The clear view from existing residents (for whose benefit the condition within the Model Standards is included) is that they have no objections – mainly because most sites border fields.***

Officers' Comments

54. Officers accept that this would probably be one of the most difficult conditions of the Model Standards to enforce and, in view of the concerns raised by residents (for whom the model condition benefits), if members wish to depart from the Model Standards, this is probably the easiest to justify, having regard to the explanation in the Model Standards set out in Paragraph 41 above.

(h) Height of trees/hedges and combustible fences between park homes

55. Based on the concerns raised by residents, restricting the height of trees/hedges and combustible fences appears to be the most contentious proposed condition, and one of the two reasons for the Call-in to the Overview and Scrutiny Committee.

56. None of the current site licences refer to any maximum height for trees, hedges or combustible fences (e.g wooden) in the separation space between park homes – although it should be noted that planning permission is required if any residents or site owners wish to erect a fence in excess of 2 metres in height. It should also be noted that the Model Standards **1989** did not restrict the height of trees/hedges and fences.

57. However, the Model Standards **2008** state that:

“Fences and hedges, where allowed and forming the boundary between adjacent caravans (park homes), should be a maximum of 1 metre high.”

58. Numerous existing residents across all sites currently have hedges/trees and fences in excess of 1 metre. The concerns of residents appear to be two-fold:

- (The main concern) Restricting the height of dividing hedges and fences would severely reduce the amount of privacy between park homes, which could also lead to a reduction in their value because the purchase of a home would not be as appealing to prospective purchasers; and
- The cost of reducing the height of trees and hedges, and particularly replacing existing fences over 1 metre in height with new fences no more than 1 metre in height, would be very expensive - especially for those on low incomes and/or unable to undertake the work themselves.

59. As explained earlier, the Cabinet did agree that the deadline for reducing the height of hedges and trees to no more than one metre within separation spaces should be set at six months, and that the deadline for reducing the height of fences to no more than one metre within separation spaces should be set at three years. The Cabinet also agreed that financial assistance, in the form of the Council's Handyperson Service and the Small Loans Scheme, should be made available to residents that qualify, in order to assist them in complying with conditions related to the removal or replacement of sheds (see later), fences and trees/hedges.

Option 1 – Require that all trees/hedges and combustible fences on existing sites be reduced to a height of 1 metre (in accordance with the Model Standards), within agreed timescales (either those already agreed by the Cabinet or other)

60. The reasons for inclusion within the Model Standards relate to fire safety, no doubt having regard to the BRE Information Paper on “*Fire spread between caravans*”. The Assistant Divisional Officer from the Essex Fire and Rescue Service advises that the presence of combustible materials between park homes can form a bridge, that assists/accelerates fire spread. The fact that the Model Standards allow any form of dividing tree/hedge/fence is in recognition of the practical need to have a physical division between park homes. However, the higher the tree/hedge/fence, the more combustible material is present, and the greater the risk. It should be noted that **non-combustible** fences (e.g. made of metal) in excess of 1 metre in height would be permissible, subject to planning requirements.

61. However, it has to be recognised that requiring trees/hedges/fences to be reduced to a height of 1 metre will cause real difficulties for existing residents; their quality of life will be affected; it would be costly; and it would be very unpopular.

62. Many residents also make the point that the sites have been in existence for many years without any height restriction, so what's changed ? The answer, of course, is that new Model Standards have been introduced by the Government, with height restrictions, to which the Council must have regard.

Option 2 – Require that all trees/hedges and fences on existing sites have a maximum height of 2 metres

63. This was the proposal suggested within the Call-in to the Overview and Scrutiny Committee. It is felt that it would be accepted by most existing residents, although it should be noted that a number of existing trees and hedges are currently in excess of 2 metres, and would still need to be reduced. The proposal from the Cabinet that older and vulnerable residents could be assisted either through the Handyperson Scheme and/or the Small Loans Scheme could be adopted.

64. However, the important drawback is that it would increase the mass and height of combustible material within the separation space between park homes, thereby increasing the risk and speed of fire spread between park homes, and would be contrary to the advice of the Fire Authority, to which the Council must have regard (but not necessarily comply).

65. Again, if members wish to depart from the Model Standards in respect of this condition, they may decide to do so, having regard to the explanation within the Model Standards set out in Paragraph 41 above.

Option 3 – Include no maximum height restriction for hedges/trees and/or fences

66. This is similar to Option 2, but with no height restriction, which would allow existing hedges/trees in excess of 2 metres in height to remain, or existing hedges/trees below this

height to grow above 2 metres, without any requirement to trim them.

67. The comments contained within Option 2 above apply, although it should be noted that the mass and height of the combustible items would be greater, and the risk of fire spread increased further.

68. Members are reminded that fences in excess of 2 metres in height would require planning permission.

(i) Width of hedges and their distance from park homes

69. Another issue relating to hedges only is their width and their distance from park homes. Although not a requirement of the Model Standards 2008, the Fire Officer has advised that hedges should not be located within 3 metres of a park home. This is because not only may a thick hedge encroach substantially into the separation space between park homes, it would also impact heavily on the fire load.

Option 1 – Restrict the distance of the edges of hedges from a park home to no less than 3 metres

70. This is the approach recommended by the Fire Officer. It should be noted, however, that there are likely to be a number of hedges that would not comply with such a requirement, and it could be difficult for residents to trim the width of their hedges, which is therefore likely to be unpopular with residents. Furthermore, since many park homes are precisely 6 metres from each other, any hedge of any thickness is likely to contravene this requirement.

Option 2 – Restrict the distance of the edges of hedges from a park home to less than 3 metres (e.g. 2 metres)

71. This would go some way to meeting the Fire Officer's recommendation and would allow most existing hedges to remain, whilst still ensuring a reasonable and practical distance from park homes.

Option 3 – Do not restrict the distance of the edges of hedges from a park home

72. As explained above, this would not contravene the Model Standards 2008, since they make no reference to this issue. However, it could allow the provision of a very thick hedge, located very close to a park home, which could significantly increase the risk of fire spread between park homes. It would also appear to have no regard to the Fire Officer's advice.

Officers' Comments

73. Again, it is officers' view that the Fire Officer's advice should be accepted, as far as practically possible. However, they do have a concern with the practicalities of enforcing a condition that would probably disallow the provision of almost any hedge, since it is likely that the thickness of most hedges would result in the edge of the hedge being less than 3 metres from a park home. For this reason, and since there is no reference to this requirement within the Model Standards 2008, it may be more practicable to restrict the distance to slightly less than 3 metres.

(j) Location of combustible sheds in the separation space between park homes

74. This is another major concern of residents. Although the requirements of existing site licences vary, a typical existing Council site licence states (Appendix 1 of Annex 1):

“At least 30 square feet of covered storage space shall be provided for each mobile home standing. The structure to be separate from the mobile homes they

serve and, unless constructed of non-combustible materials, to be at least 13 feet (3.96 metres) from any other mobile (park) home”.

However, this condition has rarely been enforced over the years.

75. Although the Model Standards 2008 make no specific reference to combustible sheds not being allowed within the separation space between park homes, they do state within the Explanatory Notes (which it is considered applies to sheds):

”If structures, other than garages, are on pitches within the separation distance and are of a combustible construction, then the local authority should consider allowing sufficient time for them to be replaced with an acceptable non-combustible model.”

76. The Council’s proposed site licence conditions, agreed by the Cabinet, therefore state that:

“any shed for storage purposes will only be permitted within the separation distance if it is made of non-combustible material”.

77. Numerous existing park home residents across all sites currently have combustible sheds located within the separation space. A survey by officers undertaken in 2003 identified around 240 combustible sheds within separation spaces.

78. As explained earlier, the Cabinet did agree that the deadline for relocating sheds should be set at six months. Again, the Cabinet agreed that financial assistance, in the form of the Council’s Handyperson Service and the Small Loans Scheme, should be made available to residents that qualify, in order to assist them to relocate combustible sheds.

Option 1 - Require that no combustible sheds be allowed between park homes on existing sites, and that existing sheds must be removed within an agreed timescale (either that already agreed by the Cabinet or another)

79. This would reduce the risk of fire bridging the separation space between park homes, for the same reasons as set out under Option 1 above in respect of the heights of trees/hedges and fences.

80. However, again, it has to be recognised that not allowing sheds to be located between park homes will cause an inconvenience to existing residents.

Option 2 – Allow combustible sheds to be located between park homes, subject to them complying with planning regulations

81. As explained above, many residents already have combustible sheds located between park homes. However, the presence of a combustible item, such as a wooden shed will again increase the risk of fire spread between park homes, and again would be contrary to the advice of the Fire Authority.

82. However, as before, if members wish to depart from the Model Standards in respect of this condition, they may decide to do so, having regard to the explanation within the Model Standards set out in Paragraph 41 above.

83. It should be noted, though, that sheds constructed of certain materials (e.g. brick/blockwork) and/or above a certain size would still require planning permission.

Officers' comments on (a) the height of trees/hedges and fences and (b) the continuing provision of sheds between park homes

84. Officers must remind members that, in accordance with the Caravan Sites and Control of Development Act 1960, they must have regard to the Model Standards and that it would require compelling reasons to depart from the professional advice of the Fire Authority, whose Assistant Divisional Officer advises that the Model Standards should be applied in full, especially where the risk of fire spread is increased.

85. Officers are particularly concerned that, if there is subsequently a fire at a park home site, that spread to neighbouring park homes due to the presence of combustible materials between mobile homes that contravened the Model Standards, the Council could be criticised for not following the Model Standards in the light of the scientific evidence, especially if the fire resulted in a loss of life.

86. Therefore, it is officers' view that the Model Standards' conditions restricting the height of trees/hedges and combustible fences to 1 metre in height, and the proposal to require no combustible sheds to be located between park homes should be included within the Council's site licence conditions, but that – as previously agreed by the Cabinet - residents be allowed 6 months to reduce the height of existing trees/hedges and remove combustible sheds, and 3 years to reduce the height of combustible fences – although it should be noted that such a time allowance in itself presents a risk.

87. However, again, officers also acknowledge the strength of feeling amongst existing residents, and the difficulties that residents would be caused, and the associated cost, if some or all of these “contentious” conditions are applied to existing sites. Officers are also concerned about the practicalities of having to enforce the contentious conditions, bearing in mind the huge number of contraventions that would apply across all of the sites, and the costs, officer time and work that would be involved.

88. Therefore, officers accept that members may conclude that trees/hedges and fences above 1 metre in height, and sheds located between park homes, should be allowed on existing sites, for the reasons given in Paragraph 41 above, again, provided that members feel that they have had due regard to both the Model Standards and the advice of the Fire Authority.

(k) Other issues

89. As part of this comprehensive review of the proposed park home site licence conditions, officers have identified two further issues that may cause concern to some residents, even though they have not yet been raised by most residents. For the sake of completeness, the Scrutiny Panel is asked to form a view on their inclusion within the proposed licence conditions.

(l) Separation distance between park homes

90. The Model Standards 2008 state that there should be a separation distance between park homes of at least 6 metres. This has been a standard requirement for many years, and is featured within the Council's current site licences (although they refer to “20 feet”), the Model Standards 1989 and the Model Standards 2008. This is both to reduce the risk of fire spread between park homes and to ensure privacy. The Building Research Establishment's Information Paper on “*Fire spread between caravans*” re-inforces the importance of a 6 metre separation distance for park homes.

91. However, a survey by officers in 2003 identified that, in 17 cases, the separation distance between park homes was less than 6 metres. Officers have recently re-visited these locations, and established that there are now only 4 cases where the separation

distance is less than 6 metres (3 at Breach Barns and 1 at Abridge Park). The distances are 3.3 metres, 5.6 metres, 5.7 metres and 5.75 metres.

92. The Notes to the Model Standards 2008 state that:

“In considering the enforcement of the separation distance the local authority should consult with the local Fire and Rescue Service. It should also seek the views and take account of representations from the site owner and affected residents before taking any steps to enforce the standard, where practicable.

Before the local authority undertakes any enforcement action, it should consider the benefit of the works against the potential impact on the residents’ enjoyment of their homes and the cost to the site owner.”

93. It should be noted that, although all the site owners have been formally consulted on the proposed continuation of the 6 metre separation space, park home owners have not. One of the recommendations to the Housing Scrutiny Panel (see Paras 115 & 116 below) is that all park home owners should be consulted on the Scrutiny Panel’s recommendations to the Cabinet. It is suggested, therefore, that the particular attention of site owners and park home owners whose homes contravene the separation distance requirement is drawn to whatever the Scrutiny Panel’s recommendations on issue are to the Cabinet, and that the Cabinet then makes its decision having regard to their specific views (if any).

Option 1 – Include a separation distance of 6 metres within site licences for both new and existing sites, but allow existing contraventions to continue indefinitely

94. This option would allow these contraventions to continue, which could be for a significant period of time. Although three of the separation distances contravene by less than 40cm, one contravenes by 2.7 metres – meaning that these two park homes are located very close together. If a fire was to occur within one of these two park homes, there is a very high risk that the fire would spread to the other.

Option 2 - Include a separation distance of 6 metres within site licences for both new and existing sites, but allow existing contraventions to continue until such time as a contravening park home is replaced

95. As can be seen from the above, over the years, site owners have remedied 13 of the 17 contraventions that were identified in 2003. This will mainly have been through site owners replacing park homes when they have been sold by the park home owners. Therefore, such an approach could continue, but with a requirement for site owners to remedy the situation on replacement, enforced within the licence conditions.

96. It should also be noted that the sales value of park homes that have to be replaced would be very low, which would inevitably result in a, potentially significant, loss of investment for the park home owners.

Option 3 – Include a separation distance of 6 metres within site licences for both new and existing sites, and require site owners to remedy the situation within a specified time period

97. This option recognises that the contraventions need to be remedied, and would give the site owner a reasonable period of time in which to remediate. It is suggested that this period could be between, say, 2 and 5 years. However, the Scrutiny Panel needs to appreciate that this would cause the park home owners real difficulties since, in each case, one of the pairs would not only be required to give up their home, but would also not receive any sales value because their home could not be sold-on.

Option 4 – Any (or a combination) of Options 1-3, but the position of park homes with a separation distance of less than 5.5 metres being remedied more quickly than the others

98. This option would result in Options 1-3 applying to park homes with a separation distance of at least 5.5 metres, but Options 2-3 applying to any park homes with a separation distance of less than 5.5 metres (including the pair of park homes identified above, with a separation distance of just 3.3 metres). This would recognize the significantly increased risk of fire spread between park homes very close together, which would be treated in a tougher way than those with a larger separation space.

Officers' comments

99. Officers would strongly recommend that Option 1 is not adopted since, having identified homes with separation spaces of less than the recommended 6 metres, some sort of plan should be in place to overcome this contravention.

100. Although most of the contraventions amount to less than 40cm, the two park homes with only a 3.3 metre separation space are a particular and serious cause for concern and there may be a case for treating such a case (and any similar cases not identified by officers) differently from the others.

(m) Distance of park homes from roads

101. The Model Standards 2008 require that no park home should be stationed within 2 metres of any road or communal car park within the site. It is understood that this is not for reasons relating to fire safety, but primarily for the benefit of park home owners, as well as for road safety.

102. When the site surveys were undertaken in 2003, it was identified that 12 park homes were stationed within 2 metres of a road within the site.

Option 1 – Require all park homes on new and existing sites to be stationed no less than 2 metres from a road within the site

103. This would be in accordance with the Model Standards 2008. However, it would be very difficult for site owners and park home owners to comply with this requirement, if they are not currently, since it would require the re-location of the park homes, which would be both costly and, in some cases, practically very difficult.

Option 1 – Require all park homes on new and existing sites sites to be stationed no less than 2 metres from a road within the site, except for those park homes in situ as at the date of the site licence

104. This would accord with the Model Standards for the future, both on new and existing sites, but allows any current contraventions to continue.

Officers' comments

105. As with the licence condition relating to the distance of park homes from site boundaries, this would be another very difficult condition of the Model Standards to enforce on existing sites. Again, since the condition benefits park home owners, who presumably are quite happy with the position of their park home, if members wish to depart from the Model Standards, this is probably another departure that could easily be justified, having regard to the explanation in the Model Standards set out in Paragraph 41 above.

(n) The overall view of officers on the issues

106. Officers acknowledge that members have a difficult task in balancing the recommendations of the Model Standards 2008 and the Fire Authority on the one hand, and the costs, inconvenience and quality of life to/of residents on the other. As reported above, some issues are more contentious than others, and some potential conditions would be more difficult to enforce than others.

107. If members do decide to depart from the Model Standards and/or the advice of the Fire Authority, they are able to do so – and, as explained at Paragraph 41, the Model Standards sets out possible reasons for departure. However, members must ensure that their reasons are clear and rational, and that their decisions can be defended at any time in the future, if challenged.

(o) The views of the Fire Authority on the options within this report

108. The Fire Authority has been consulted on the contents of this report, and it had been hoped that its views could be incorporated before the report was published. However, due to annual leave within the Fire Authority, this was not possible.

109. However, the Fire Authority has committed to provide its views in advance of the Scrutiny Panel meeting. Therefore, it is hoped that, when received, the Fire Authority's comments can be circulated to Scrutiny Panel members, and the other invited parties, in advance of the meeting.

110. Since Assistant Divisional Officer Stuart McMillan will be attending the meeting, he will be able to answer any questions on the Fire Authority's views.

(p) Sites comprising only one park home

111. Some park home sites within the District only comprise one park home. However, under the Caravan Sites and Control of Development Act 1960, they still need a site licence.

112. Although most of the Model Standards and proposed licence conditions apply equally to sites with just one park home, there are clearly some conditions that do not apply (e.g. separation distance between park homes). Officers have assessed that the following licence conditions within the proposed site licences previously recommended to the Cabinet (Annex 1, Appendix 2) do **not** need to apply:

- 4. Density & Spacing – Conditions (i), (iii) and (iv)(b) to (iv)(i) only
- 7. Lighting
- 16. Communal Recreational Space
- 17. Notices and Information – Conditions (ii),(iv) and (v) only

(q) Licensing reforms

113. Members may be interested to know that, although it does not have an effect on the issues under consideration by the Council at present, in March 2010, and following a consultation exercise, the former Government issued a paper entitled "*Park homes site licensing reform: The way forward and next steps*". A copy of the paper's Executive Summary is provided at Annex 8.

114. The Government says that it is committed to a comprehensive licensing regime, which ensures that only "fit and proper" persons are engaged in the management of park home sites, and which is backed by effective enforcement tools. The former Government's intentions included:

- Setting up a national task force to consider key aspects of licensing reform and to report back to Government on how these may be best achieved.
- The introduction of a requirement that a site owner must be a “fit and proper” person.
- Giving local authorities the power to refuse applications for licences and the power to revoke existing licences, whilst ensuring that suitable management arrangements are in place when an application is refused.
- Park homes being licensed for a specific number of homes, with local authorities given enforcement tools to ensure compliance.
- Giving local authorities power to serve enforcement notices to require site owners to undertake repairs and maintenance to sites, and ensure that sites are properly managed. Where they are not properly managed, giving local authorities the power to revoke the site licence and manage the site itself.
- The introduction of a range of new licensing offences which, on conviction, will attract “robust financial penalties”.
- The introduction of licence fees.

(r) Proposed way forward

115. The Scrutiny Panel is asked to consider the issues and options set out in this report (including any other additions, amendments or omissions that the Scrutiny Panel wishes to make) and to make recommendations to the Cabinet on the approach to be taken to the licensing of permanent residential park homes within the District.

116 It is proposed that, following the Scrutiny Panel agreeing its recommendations to the Cabinet, **all** park home residents and site owners are consulted on both the proposed licence conditions previously agreed by the Cabinet and the Scrutiny Panel’s recommendations (and provided with copies of this report to the Housing Scrutiny Panel and Annex 1 (only) for their information), with the results of the consultation exercise reported to the Cabinet at the same time as the Scrutiny Panel’s recommendations.

117. The Leader of Council has indicated that, if considered appropriate, she may decide to hold a Special Meeting of the Cabinet to consider the Scrutiny Panel’s recommendations, and the outcome of the subsequent consultation exercise.

Reason for decision:

118. The Overview and Scrutiny Committee has asked the Housing Scrutiny Panel to consider the issues relating to the licensing of permanent park home sites in the District, and to make its recommendations to the Cabinet.

Resource implications:

Budget provision: Within existing resources, unless legal action has to be taken against a large number of site owners, which could be costly and unable to estimate at present.

Personnel: Nil

Relevant statutory powers: Caravan Sites and Control of Development Act 1960

Background papers: Letters received from residents

Environmental/Human Rights Act/Crime and Disorder Act Implications: The purpose of the Model Standards are to ensure a safe environment for residents. As explained in the report, there are no contraventions of the Human Rights Act

List of Annexes

- Annex 1 Report to the Cabinet on 7th June 2010, including:
Appendix 1 – Example of current licence conditions
Appendix 2 – Proposed licence conditions for EFDC
- Annex 2 Copy of the Call-in to the Overview and Scrutiny Committee
- Annex 3 Supplementary Report to the Overview and Scrutiny Committee on 12th July 2010, including:
Appendix – List of consultees consulted on the draft licence conditions
- Annex 4 Further Supplementary Report to the Overview and Scrutiny Committee, providing a copy of the Building Research Establishment's (BRE's) Information Paper (September 1991) on "*Fire spread between caravans*"
- Annex 5 Letters of objections and petitions from:
Abridge Park Residents Association
The Owls residents
The Elms residents
Ludgate House residents
Breach Barns residents
The Woodbine residents
- Annex 6 Letter of objection from Roydon Parish Council
- Annex 7 Extract of the Minutes of the Overview and Scrutiny Committee held on 12th July 2010
- Annex 8 Executive Summary of the CLG's "*Park homes site licensing reform: The way forward and next steps*"

