
REPORT TO:	FINANCE & MANAGEMENT COMMITTEE	AGENDA ITEM: 9
DATE OF MEETING:	21ST OCTOBER 2010	CATEGORY: RECOMMENDED
REPORT FROM:	CHIEF EXECUTIVE	OPEN
MEMBERS' CONTACT POINT:	ANDREA McCASKIE (TEL: 01283 595831)	DOC: U:\JAYNE\Committee\COMMREP\Land Charges Fees.doc
SUBJECT:	LAND CHARGES	REF:
WARD(S) AFFECTED:	ALL	

1.0 Recommendations

- 1.1 To approve the fee structure for the services provided by the Land Charges section as set out in **Appendix A**, for implementation on 1st November 2010.
- 1.2 To delegate to the Chief Executive, in consultation with the Chairman of Finance & Management Committee, the authority to make any changes to the fee structure as required by the evolving situation, such changes to include any other administrative changes needed to the Land Charges service and report back to Committee.
- 1.3 To investigate whether there are alternative charging options available under other legislation, in conjunction with the Local Government Association and Local Land Charges Institute.

2.0 Purpose of Report

- 2.1 To inform Members of the effect of the withdrawal of the statutory personal search fee by Central Government on the Council and the proposed way forward for the Land Charges service.

3.0 Detail

- 3.1 The Local Land Charges service within Legal Services operates a property search service for customers who include:
 - (1) Solicitors/Conveyancers
 - (2) Private Search Companies
- 3.2 This report deals initially with Private Search Companies (PSC's), but it also has implications relating to Solicitors/Conveyancers that use the Local Land Charges service.

- 3.3 PSC's inspect the Local Land Charges Register (LLCR) by appointment for a statutory fee of £22.
- 3.4 On 27th July 2010, DEFRA issued a statement to the effect that the current £22 statutory personal search fee was to be formally revoked on 17th August 2010. They advised that authorities should stop charging, with immediate effect. South Derbyshire District Council acceded to this request, as advised by central government, and charging for this particular part of the search service ceased on 9th August 2010.
- 3.5 The action to revoke the fee has been taken as a result of the Government's consideration of the implications of the Environmental Information Regulations (EIR) 2004. They have decided that information contained in the LLCR now falls within the EIR and should have been available to inspect free of charge since the Regulations were formally introduced in 2005. This is despite the fact that additional domestic legislation was put in place from 2008 onwards in relation to cost recovery methods for property search information and that the personal search fee should be increased from £11 to £22 in January 2010.
- 3.6 The EIR allow access for free to inspect the LLCR data used to compile a property search. PSC's are obviously keen to inspect this information without charge. EIR are set within the European legislation, which means that the statutory fees previously set under domestic UK legislation are now considered to be unlawful.
- 3.7 This report outlines the financial effect of the withdrawal of the statutory personal search fee. It also quantifies the potential loss of income to the Council if PSC's are able to claim back the fees paid to the Council since January 2005, the date when the EIR were introduced. The report also looks at possible alternative charging arrangements.
- 3.8 Total income from personal searches of the LLCR from 1st January 2005 to 31st July 2010 is £100,056. It is, however, unlikely that the whole of this money will be recovered by the PSC's, as several companies are no longer in existence and, in any event, the current view is that any refunds will be to the customer and not to the PSC's.
- 3.9 In their letter, DEFRA have advised that authorities need to take their own legal advice in terms of making any repayments in respect of those fees they term as being "wrongfully charged". They further state that each case will depend on its own facts; for example, a PSC who has passed the cost of the fee to its customer might be "unjustly enriched" by a refund. A determination will be made by this Council on a 'case by case' basis where any claim is received.
- 3.10 The Council will look closely at any claims and considers that it is the responsibility of PSC's and individuals to demonstrate and provide evidence that money is owed. The Council will not necessarily be making any refunds at this stage until definitive guidance is provided at a national level.
- 3.11 It is important to note that whilst we, as an Authority, are now unable to charge a fee for the inspection of the LLCR, there continue to be costs associated with both the maintenance of the register and the search provision to our other customers.

- 3.12 The service does not anticipate that the actual number of searches will reduce, but we hope that by adjusting our fee structure on a cost recovery basis, that the Section will be able to increase the number of full official searches.
- 3.13 The Local Government Association (LGA) and Local Land Charges Institute (LLCI) are both working together to lobby Government, as there are a number of issues that require their further investigation, including the option to charge PSC's a licence fee equivalent to the personal search fee of £22 under the Re-use of Public Sector Information Regulations.

4.0 Financial Implications

- 4.1 The effect of the withdrawal of the statutory personal search fee will mean the potential loss of income. £100,056.00 has been generated from January 2005 to 31st July 2010 in personal search fees, which possibly may have to be repaid. In addition, there will be a loss of the projected income for 2010/11, as access to the LLCR must now be provided free of charge from August 2010. This has been estimated at approximately £24,376.
- 4.2 In the report on this agenda entitled 'A review of the Council's Medium Term Financial Plan 2010 to 2016', it is considered prudent that the Medium Term Financial Plan allows for a provision of £100,000 covering any claims for refunds by individuals and PSC's who have been charged since 2005.
- 4.3 The revocation of the statutory personal search fee is only a portion of the search process. Solicitors and Licensed Conveyancers use the full Local Authority Search service and are not affected currently by this action from DEFRA, but this position may change in time, and the following needs to be borne in mind.
- 4.4 The removal of the statutory personal search fee brings into question the viability of our current fees for the official search product comprising of answers to both the LLC1 (Register) and CON29 request from Solicitors and Licensed Conveyancers. Current fees are £99 for an official residential search and £135 for an official commercial search.
- 4.5 The immediate effect of revoking the £22 personal search fee makes the Council's official search less attractive to customers whilst it is priced at its current level. The inference is that as the LLCR data is deemed to be EIR, this may have an effect on the charging structure we currently have in place for our full official Local Authority Searches, as we may only be able to recoup a 'supply' cost, rather than the full cost of recovery that is currently in place under domestic legislation.
- 4.6 There is the possibility that the domestic legislation still in place is also overruled by EIR legislation. It is suggested to Members that as the data held on the Register (where the statutory fee has been revoked) is exactly the same data that is used by Land Charges Section to compile the Register portion of the official search, that the current residential search fee should be reduced.
- 4.7 With the removal of the personal search fee, PSC's are likely to take the opportunity of reducing the fee that their customers pay them to less than our current fee. As it is a competitive market, if we maintain our fee at existing levels, this is likely to result in significant reductions in the number of official searches and, therefore, the income generated.

- 4.8 Approval is sought to reduce our fee so that we are able to attempt to maintain our market share. Recent marketing initiatives carried out by the Land Charges service has brought our average market share back to 53% since April 2010, from 35% for the financial year 2009/10.
- 4.9 The Local Authority (Charges for Property Searches Regulations) state that the Local Land Charges service is provided on a cost recovery basis and, as such, cannot make a profit.
- 4.10 The data capture of Planning and Building Control information, which is currently ongoing, is expected to be completed by the end of October 2010. This will enable efficiency savings to be made which, on a cost recovery basis, will require a decrease in the official residential search fee.
- 4.11 The projected income budget for official searches in 2010/11 is £125,000.00. This obviously contained a projected figure for the income to be generated from personal search fees, which have now been revoked. To ensure that the official search fee is calculated on a cost recovery basis, it is suggested that the fee for a residential search is reduced from £99 to £75. We have projected that 850 official searches will be conducted in 2010/11 and, therefore, such a fee reduction would generate £63,750.00.
- 4.12 In addition to this (using projection personal searches of 1,700 for the period 2010/11) and based on a 40% shift from personal searches to official searches due to the fee reduction (680 x £75), this could achieve additional income of £51,000.00, totalling £114,750.00.
- 4.13 If the official search fee is not reduced, the service may suffer from increasing numbers of requests for searches to be carried out for free, with PSC's targeting our traditional solicitor custom base and thereby reducing the number of official searches undertaken. If Members agree to the revised fee structure, we would strongly market the price reduction to all of our potential customers, to maximise the take-up of official residential searches.
- 4.14 It is proposed that the fee for commercial searches be increased from £135 to £150, with an increased fee for the CON29 element of the search process, to reflect the more complex nature and additional time needed to complete these searches.
- 4.15 In an attempt to encourage PSC's to undertake a LLC1 search, which would be returned electronically, rather than the conduct of a personal search of the LCR, which will necessitate them in travelling to and from the Council Offices, it is proposed to reduce the fee for a LLC1 from £28 to £25 for residential properties.
- 4.16 The Land Charges service provides a number of different types of searches in addition to the ones mentioned above. It is proposed that Members consider approving the fee structure attached in **Appendix A**, which lists the searches currently available and the proposed fee.
- 4.17 In order that the Land Charges Section can react quickly to any further external changes in this evolving service area, it is proposed that authority is delegated to the Chief Executive, in consultation with the Chairman of Finance and Management Committee, to make any changes to the fee structure or administrative changes it is deemed necessary to the Land Charges service and, in the event, report these back to Committee.

5.0 Corporate Implications

- 5.1 The Local Authority has a statutory duty to maintain the LLCR, make searches of it (or enable them in the case of Personal Searchers) and issue LLC1 certificates.
- 5.2 The Land Charges service currently deals with EIR enquiries and acts as a 'one stop shop' for property search information. This frees up the time and resources of departments throughout the authority, who otherwise would have to respond to property search enquiries on an ad hoc basis.

6.0 Community Implications

- 6.1 The information contained in the searches provided by the Land Charges service is normally required by individuals and businesses as part of buying a house or other property or land transaction.

7.0 Background Papers

- 7.1 The Local Land Charges (Amendment) Rules 2010