

REPORT TO CABINET

Title: **NEW LOCAL LAND CHARGES REGULATIONS**

Date: 25 June 2009

Member Reporting: Councillor Burbage

Contact Officer(s): Rupert Avery, Legal Practice Manager

Wards affected: ALL

SUMMARY

- 1.1 This Report seeks Cabinet approval to adopt a new schedule of fees for access to information concerning land and property, including Local Land Charges, in order to comply with regulations issued by the Government and decisions made by the Information Tribunal.
- 1.2 The proposal covers three separate but related issues :
- a charging regime which reflects the 'Local Authorities (England) (Charges for Property Searches) Regulations 2008'.
 - a policy that Land Charges will be cost-neutral over a three-year period, as required by the Local Authorities (England) (Charges for Property Searches) Regulations 2008;
 - a policy to comply with the Markinson ruling by the Information Tribunal, concerning the fees which should be charged for information;

2. RECOMMENDATION: That:

- i) **The changes to the regime affecting access to land and property information as a result of new Government regulations and the Markinson Decision be noted.**
- ii) **The schedule of fees for 2009/10 in Appendix A be approved to take effect from 1st July 2009.**
- iii) **The Head of Finance, in consultation with the Leader and Lead Member for Finance, be authorised to make any minor adjustments to the fees, as may be operationally necessary in order to comply with the new regulations.**

What will be different for residents as a result of this decision?
Residents will have better access to land and property information.

SUPPORTING INFORMATION

Background

- 3.1.1 The Council has a statutory duty to maintain a Local Land Charges Register, which contains information on land and property in the Borough. A search of the Register is processed by the Council's Land Charges Section and is provided to a requestor on form LLC1, for a set fee.

- 3.1.2 Requesters can also ask for information on a set of 64 separate enquiries broadly relating to four areas : Planning, Building Control, Highways and Environmental Health. The Land Charges section receives the information from the different Council departments, amalgamates it and sends out the information on form CON29. An additional fee can be charged for this.

As an alternative to a direct search by the Council, third parties can use a personal search company (PSC). The PSCs would pay for a copy of the Register entry and then personally inspect other Council departments' records for the remaining information. Some of this additional information would be charged for.

- 3.1.3 In response to multiple complaints from PSCs about the level of charges, the Office of Fair Trading (OFT) produced a Report entitled 'Property Searches – A Market Study' in September 2005. The Report made a number of recommendations to ensure that competitiveness was improved, which the government accepted in full. This included that local authorities should make the basic information needed for a search available to PSCs on the same basis as to themselves, to ensure a level playing field, thereby cancelling out additional charges Councils were making.
- 3.1.5 In August 2007, the Government introduced Home Information Packs (HIPs), which required that information on land/property for sale was provided to potential purchasers, in a standard form, by the seller prior to completion. This would include information provided via a Land Charge search. In a further effort to level the playing field" the Government, fixed the fee that Councils could charge for a personal search at £11 – which is significantly below the standard charge for an LLC1 across virtually all Councils - and gave the PSCs indemnity insurance, so that they would be covered for any errors or omissions.
- 3.1.6 As HIP providers are competing with each other for business, there was pressure to minimise the cost of the pack contents, and in particular the cost of the local search. As a result, PSCs charged less for searches than Councils did, which contributed to an increase in demand for personal searches. They now account for around 60% of searches in the Royal Borough and up to 80% in other Council areas.

Over the same period, there has been a substantial reduction in the number of searches requested, as a result of the property market downturn. For example, the total number of searches in April 2008 was 589; in April 2009, it was just 350. As a result, there has been a substantial reduction in the level of income achieved. In 2006/07, net income was £386K after all costs and recharges. This fell to £112K in 2007/08 and to a deficit of £226K in 2008/09 (though this did include one-off costs which will not be charged in future years).

In order to help mitigate this loss of income, the Land Charges register and search facility was changed from Northgate SearchNet to TLC UNIFORM, saving c.£35K per year. In addition, the Council switched to electronic service delivery in July 2008 and currently c.88% of all searches are now returned via email, rather than post.

- 3.1.7 In December 2008, the Government issued the Local Authorities (England) (Charges for Property Searches) Regulations 2008, which changed the charging and access arrangements yet again. These complex regulations established a framework on how local authorities must charge for land and property information.

The regulations require the Head of Finance to publish annually the total cost of granting access to the information, the number of requests and the total fees received. Most importantly, they also state that local authorities can only recover the costs of their property search services over a three-year period – any over or under estimate of the income in one year must be taken into account when assessing the charge for the following financial year. Councils are also prohibited from charging residents more than the cost charged by one department to another department within the Council for the same information and cannot charge administration fees.

Furthermore, rather than being able to answer all 64 questions on a CON29 as a whole, Councils now have to provide answers to each of the questions on the CON29 form individually. Therefore, the cost for providing each answer has to be separately identified.

- 3.1.8 While the regulations did not change the amount Councils could charge for personal searches, the regulations did remove the government backed indemnity insurance from PSCs. Therefore, PSCs need to have confidence that the information they provide to their clients is accurate and as a result, their costs have risen.
- 3.1.9 The Council has, therefore, taken the opportunity to consider the level of fees and charges in implementing the regulations. As a result, Cabinet is proposing to increase three of the current charges; reduce 1 of the charges; and introduce a new facility for repeat searches, following customer feedback. It is anticipated that the new fees will be cost neutral overall, as the Council is likely to pick up a greater share of the total number of searches as a result of the reduction in charges.

The Markinson Decision by the Information Tribunal

- 3.1.10 Third parties can also request the data from individual sections of the Council (e.g. Planning, Environmental Health etc.), for which they are independently charged. In 2005, a resident of Kings Lynn & West Norfolk Borough Council challenged the amount he was charged for photocopies of some planning information that he was after and complained to the Information Commissioner and the Information Tribunal. The resident, Mr Markinson, argued that being charged 50p per sheet for a photocopy; plus £6 each for a copy of a Building Control Notice and a Planning Notice, was illegal under the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR).
- 3.1.11 The Information Tribunal ruled (in what is known as the Markinson Decision) that Councils should neither make a profit on the provision of information under FOIA and the EIR, nor can charge for staff time, including in maintaining and locating the information requested. This means that Councils can only charge the actual cost of photocopying the data, which the Information Tribunal considered 10p per sheet of A4 reasonable. This is mainly to encourage Councils to provide the information online.
- 3.1.12 Currently, the Council charges significantly more than the amount deemed reasonable by the Information Tribunal, receiving a total income of c.£25 - 30K per year from the provision of information. The Council will, therefore, have to reduce its fees in line with the Information Tribunals ruling. However, a lot of the information requested, can be put online and therefore requesters can be directed to the Council's website, thus reducing the cost of providing the information.

4 OPT IONS AVAILABLE AND RISK ASSESSMENT

Options

	Option	Comments	Financial Implications
1.	Agree to the new charges as proposed in Appendix A (below).	This is the recommended option, as the proposed fees comply with the new regulations and the Markinson decision. They also show that the Council has responded to customer feedback and gives the Council maximum flexibility in responding to market conditions.	Revenue : £25 – 30K in lost revenue from the provision of Planning, Building Control, Highways and Environmental Health information is unlikely to be recovered.
2.	Set a different level of charges.	Any new charges will have to comply with the new regulations. Higher charges will be challenged by Personal Search Companies if there is any evidence that the charges are higher than they should be and if there is any evidence that the Council is making a profit.	Revenue Capital
3.	Status Quo	Keeping the charges as they are will mean that the Council will not comply with the new regulations or the Information Tribunals decision, nor respond to customer feedback.	Revenue Capital

5. Risk assessment

5.1 The regulations came into force on 1st April 2009 and therefore the Council is at risk of being challenged by not publishing its new charges. In addition, by not changing its charges policy as a result of the Markinson decision, the Council is again at risk of being challenged via the Information Commissioner.

5.2 The proposed new charges include a large reduction in the cost of a CON29R. However, any loss of income as a result of this is anticipated to be met by an increase in the number of searches carried out direct with the Council, rather than via a Personal Search Company; by the increase in charges to the LLC1 and CON29O; and by the introduction of the new charge for repeat searches. It is likely, however, that this will not recover the £25-30K income from the provision of information by Planning, Building Control, Highways and Environmental Health.

6. CONSULTATIONS CARRIED OUT

6.1 The Council has received guidance from the Local Land Charges Institute concerning the implementation of the new regulations. In addition, Land Charges Officers regularly discuss service needs with their customers and the new charge for Repeat Searches is a direct result of those discussions.

7. COMMENTS FROM THE OVERVIEW AND SCRUTINY PANEL

There were no comments from the Corporate Services Overview and Scrutiny Panel.

8. IMPLICATIONS

The following implications have been addressed where indicated below.

Financial	Legal	Human Rights Act	Planning	Sustainable Development	Diversity & Equality
✓	✓	✓	N/A	N/A	N/A

Background Papers:

Local Authorities (England) (Charges for Property Searches) Regulations 2008

APPENDIX A

LAND CHARGES

SEARCH	CURRENT CHARGE	PROPOSED CHARGE
LLC1 AND CON29R	£120	£90
LLC1 ONLY	£25	£30
CON 290 ENQUIRIES (with the original search)	£10.00	£15
CON 29R Standalone Enquiries	£95 plus £12 admin fee	£60
CON 290 Standalone Enquiries	£10 plus £12 admin fee.	£15
ADDITIONAL PARCELS	£10	£10
PERSONAL SEARCHES (by appointment) - Statutory Fee	£11	£11
REPEAT SEARCH – LLC1 AND CON29R (Within 3 Months of Original Search)	N/A	£40

PLANNING AND BUILDING CONTROL

DOCUMENT	CURRENT CHARGE	PROPOSED CHARGE
PLANNING DECISION NOTICE	£10.00	10p per sheet
BUILDING REGULATION DECISION NOTICE	£10.00	10p per sheet
BUILDING REGULATION COMPLETION CERTIFICATE	£10.00	10p per sheet
APPEAL DECISIONS – up to 5 pages – subsequent pages	£10.00 £0.30	10p per sheet
TREE PRESERVATION ORDERS	£25.00	10p per sheet
SECTION 106 AGREEMENTS – up to 5 pages – subsequent pages	£10.00 £0.50	10p per sheet
GENERAL PHOTOCOPYING – other than the above A4 SIZE – First Sheet Subsequent sheets (Residents, Students and Voluntary organisations 30p all sheets) A3 SIZE – First Sheet Subsequent Sheets (Residents, Students and Voluntary organisations 60p all sheets)	 £1.24 £0.26 £2.56 £0.50	10p per sheet
HISTORY RESEARCH	Householder per application £25. All other cases per application £85.	No Change.