



Report to: Council

Date of Meeting: 1 March 2007

Report from: Head of Legal & Democratic Services

Title of Report: Local Land Charge Services Review

Agenda Item Number: **8**

1. PURPOSE AND SUMMARY

- 1.1 The purpose of this Report is to set fees for local land charge services in respect of the statutory Local Land Charges Register.
- 1.2 The Local Land Charges Act 1975 was amended by the Constitutional Reform Act 2005 so as to require registering authorities in England to specify and publicise their own fees for local land charges services as from 1 April 2007 except for personal searches of the local land charges register which will continue to be set nationally.
- 1.3 Council is therefore being asked to specify and publicise the said fees, having regard to the statutory guidance entitled 'Guidance for Registering Authorities on Setting Fees for Local Land Charge Services in England' issued in January 2007.

2. CONSULTATION

- 2.1 The Council has consulted the local Law Society and the local Chamber of Commerce.

3. CORPORATE PLAN AND PRIORITIES

- 3.1 Customer Excellence is the Council's priority 1 and is highly relevant to the local land charge service. So too is the Council's priority 7 of maximizing efficiencies.

4. IMPLICATIONS

4.1 Financial and Value for Money

4.1.1 The Council is not permitted to set any fee it likes for the provision of its local land charge service. It cannot take into account other services (such as replying to enquiries of the local authority) for the purpose of setting its fees.

4.1.2 The cost of the provision of the local land charge service is in effect ring-fenced taking one year with another.

4.2 Legal

4.2.1 Section 13A of the Local Land Charges Act 1975 (as inserted by the Constitutional Reform Act 2005) provides that local land charges fees are set locally (with the exception of the personal search fee) and, taking one year with another, must not exceed the cost of provision of the service.

4.3 Personnel

4.3.1 None

4.4 Other Services

4.4.1 None

4.5 Diversity

4.5.1 None

4.6 Risk

4.6.1 There is a risk that, by increasing the level of fees for official searches that more people may decide to use personal search agents which offer much lower fees for searches due to lower overheads. The person search fee (exclusive of any charge added by any personal search agent) is fixed nationally by regulations at £11.00.

4.6.2 If the level of fees are nil or lower, then there is a risk that the Council might be challenged for anti-competitive practice if such levels cannot be justified.

4.7 Crime and Disorder

4.7.1 None

4.8 Other Implications

4.8.1 None

5. BACKGROUND, POSITION STATEMENT AND OPTION APPRAISAL

- 5.1 The Council is a registering authority under section 3(1) and section 16(1) of the Local Land Charges Act 1975 and is therefore required under section 3 of that Act to keep for its area a local land charges register and an index whereby all entries made in that register can readily be traced. This includes making entries on the register and giving out information about such entries.
- 5.2 The statutory local land charges register is divided into twelve parts including matters such outstanding liability for road or other financial charges and other notices of restriction or prohibition on a property (including land), either to secure the payment of a sum of money or to limit the use of the said property (including land) such as tree preservation orders and planning enforcement notices.
- 5.3 The twelve parts of the Register are: Part 1 – General Financial Charges; Part 2 Specific Financial Charges; Part 3 – Planning Charges; Part 4 – Miscellaneous Charges; Part 5 – Fenland Way Maintenance Charges; Part 6 – Land Compensation Charges; Part 7 – New Towns Charges; Part 8 – Civil Aviation Charges; Part 9 – Opencast Coal Charges; Part 10 – Lists of Buildings of Special Architectural and Historic Interest; Part 11 – Light Obstruction Notices; Part 12 – Land Drainage Schemes
- 5.4 The local land charge service is therefore wider than just a search service and encompasses other services.
- 5.5 Searches are undertaken where a person for example wishes to acquire an interest in property, whether freehold or leasehold, or re-mortgage. It is prudent for that person to ensure that a 'search' is undertaken to check for any matters which affect the property including any land. This is because certain matters which are 'land charges' are a burden on the land which are enforceable against successive owners. So before proceeding with an acquisition a person may demand that a local land charge burden is discharged or alternatively they may wish to renegotiate the acquisition price or simply be prepared to accept the burden and deal with it appropriately.
- 5.6 Such a 'search' of the local land charges register may be made either in person or 'in writing' (i.e. by post or electronically). A search may therefore be a 'personal search' or an 'official search'.
- 5.7 It however only relates to the property or land being searched against and by definition only relates to matters which are registrable as local land charges and registered at the time of the search.

- 5.8 The search also does not cover matters which are proposals in the future nor matters which are not local land charges. Enquiries of a local authority known as 'Con 29' (conveyancing 29) are designed to cover such issues but are not dealt with by this report. The generic term 'local authority search' covers both the land charges register and enquiries of a local authority. Current fees and charges for the composite 'local search' are unaffected by the recommendations.
- 5.9 This report is therefore however only concerned with a local land charge register search and indeed other local land charge services. It does not though deal with the issue of the fixing of the level of a fee to search the local land charges register in person. Under section 8 of that Act any person may search in any local land charges register on paying the prescribed fee. However, the prescribed fee for a personal search is set nationally and thus the Council cannot set the level of this fee.
- 5.10 Over recent years the Council like other Councils has faced stiff competition from personal search agents who conduct the person search on behalf of others. They pay the prescribed statutory fee to the Council but charge their customer for so doing and often back the results with insurance. This can have an adverse effect on the use of the official search service and in particular the Council's income.
- 5.11 The statutory guidance states on page 8 thereof at para. 5.5: 'Registering authorities will receive a statutory fee specified by the Lord Chancellor under the 1975 Act for each personal search of the local land charges register. This is £11 at present. This is intended to approximate to the average total cost over all registering authorities in permitting the personal search. As personal searches would not be possible without a register, the fee is intended to include a contribution to the indirect costs of enabling a personal search of the local land charges register. Income from the £11 fee should be taken into account in calculating the total costs of providing local land charges services. So, if the direct cost for the personal search is less than the £11 set fee, the surplus should be offset against other local land charge service costs.'
- 5.12 From this extract of the statutory guidance, it can be seen that even the nationally set figure for an official search and other local land charge services was an approximation of the average cost. The guidance explains that the fees set by the Lord Chancellor could only approximate to an average cost for all registering authorities rather than the cost to each authority as the methods of providing local land charges services differ from one registering authority to another.
- 5.13 It was therefore decided to change this (at least as regards the official search fee) by amending the law to move responsibility on to individual registering authorities to set fees by reference to actual costs at each registering authority.

- 5.14 Herein lies the challenge for the Council in terms of its commitment to drive through continuous improvement for the benefit of the service user. Against the current market place with the increasing use being made of personal search agents, the Council has to critically examine how it can deliver its local land charge service to maximize the benefits to the user of the service, enhancing the use of the service for postal and electronic searches.
- 5.15 The Council has an excellent record for meeting turnaround times for search replies, with almost a 100% target being achieved within the former Best Value Indicator Target of within 10 days. Therefore, improving turnaround times does not seem to be an issue for service users. It is the cost of the postal and electronic search that is the real issue for users. Can the Council deliver the service at a competitive price?
- 5.16 With regard to an official search (LLC1), the Council has no option but is obliged to provide an official search facility of the statutorily maintained local land charges register under section 9(1) of the 1975 Act. So we cannot simply discontinue the official search service.
- 5.17 Where a request for an official search has been made and the search fee has been paid in the manner specified, the Council must make the search and issue the official certificate setting out the result of the search, with statutory compensation being payable in accordance with section 10 of that Act where there was non-registration of a local land charge or a defective official search certificate.

Determining the prescribed manner of payment

- 5.18 The Council must therefore decide what the manner of payment should be and more fundamentally what the fee for an official search should be as from and including 1 April 2007 and deal with publicity requirements.
- 5.19 Currently payment is made electronically by BACS (banks automated clearance system) where requests are made through the National Land Information Service otherwise payment is made by cheque or cash.
- 5.20 Whichever of the above methods are used, and whatever local land charge services are provided, funds must be cleared before a search certificate is issued in order to safeguard public funds. The specified manner of payment should therefore reflect this.

- 5.21 As the section 13A(5) of the 1975 Act and the guidance makes clear, the Council in setting fees must secure that, taking one financial year with another, fee income is not allowed to exceed the cost of providing the service. It could set a nil fee or at below cost but the guidance makes plain that if so doing the Council must give clear justification, especially when a nil fee is set. In particular, the guidance warns of the need to exercise care to avoid any anti-competitive implications should the Council wish to set a fee below cost. If a fee is set at below cost, then there is by definition a subsidy from elsewhere.
- 5.22 The Council therefore has to determine what the appropriate fee should be as from 1 April 2007 and review fees each year in order to check whether they remain appropriate to provide for the cost of providing the local land charge service.
- 5.23 The guidance states on page 4 that: 'In specifying and publishing the fees, registering authorities must have regard to this guidance. Having done so, they may decide that for their own circumstances the fees should be set differently. So long as the fees are set in accordance with the 1975 Act as amended, this would be entirely proper. This guidance does not therefore prescribe a methodology that has to be followed. In general terms, the guidance recommends that registering authorities start the process of specifying fees for local land charges services by identifying the local land charges services they provide and calculating the cost of those services. The authority will then be able to calculate a unit cost for those services'.

Identifying what the local land charge services are and how they are structured

- 5.24 Adopting this approach, the first step is to identify the local land charge services.
- 5.25 Unfortunately, there is no definition of what constitutes the local land charge services under the 1975 Act. Certainly, it does say that different fees may be specified for different services or descriptions of services and services or descriptions of services may be at no charge. But what services or descriptions of service?
- 5.26 Traditionally the Lord Chancellor prescribed different fees for an official search of the local land charges register, namely £6 if the application was made in writing and £4 if the application was made electronically. (The Council is connected to the National Land Information Service (NLIS) at Level 2 which means that search applications can be submitted electronically and returned the same way). These fees were thus for the same service supplied in different ways.
- 5.27 The guidance states at page 7 that the Council 'might specify fees for the same range of local land charges services and descriptions of service, or for each group of services or descriptions of service as the Lord Chancellor, but is not obliged to do so.'

- 5.28 The Appendix to this report sets out the said categories used by the Lord Chancellor under the Local Land Charges (Amendment) Rule 2003 SI 2003/2502.
- 5.29 The guidance points out that a Council might decide to specify charges for the registration of all local land charges, the making of the entry on a register and the provision of an official certificate of search in Form LLC1, the request of an official certificate of search in Form LLC1 electronically and by post and the Council could even consider offering an expedited premium service and a standard time service.
- 5.30 The Council must therefore decide on the services or descriptions of services.
- 5.31 Past history shows that the making of entries are almost invariably by or on behalf of the Council or County Council. So there is probably no real need to change the status quo as to the services or description of services as regard entries.
- 5.32 Searches will continue to be postal or electronic so no change is envisaged other than the consideration of a premium and standard option. However, given that previous requests for a premium service have tended to relate to enquiries of a local authority (Con 29), there appears to be little merit in introducing extra complexity as regards a local land charges search.
- 5.33 I therefore recommend that at least for the forthcoming year the services and descriptions of services remain the same as that undertaken and previously categorized by the Lord Chancellor. This should however be reviewed in the light of experience.
- 5.34 This is in accord with the statutory guidance which states at page 8 that 'in setting fees registering authorities should first identify the services and descriptions of local land charges service that they provide or wish to provide. These will presumably include all the items for which the Lord Chancellor previously set a fee, other than personal searches of the local land charges register, but need not be limited to them'.

Determining the total cost of the local land charge service

- 5.35 The next matter that the Council must ascertain is the total cost of the local land charge service because as the statutory guidance makes clear at page 7 that 'each authority must ensure that taking one financial year with another the income from fees charged for each service does not exceed the costs of providing the service. The same principle applies to each description of service and each group of services or descriptions of service for which the registering authority sets a fee. In carrying out this comparison, registering authorities must compare the income with the cost of the provision of the service, description of service, group of services or group of descriptions of service, as the case may be, to which the income relates'.
- 5.36 With regard to the calculation of the cost of the service or description of service provision, the guidance makes clear that this is the total cost i.e. it includes direct and indirect costs. It states at page 8 that 'this will include the direct costs of maintaining the local land charges register and its index and keeping them up to date. The cost will also generally include indirect costs, such as contributions to central and overhead costs, insurance, amortized costs, depreciation and the cost of capital.'
- 5.37 In calculating the cost of having the Register, the Council must take into account a surplus element of the fee prescribed by the Lord Chancellor and received in respect of each personal search (currently £11). The statutory guidance states at page 8 and 9 that 'income from the £11 fee should be taken into account in calculating the total costs of providing local land charges services. So, if the direct cost for the personal search is less than the £11 set fee, surplus should be offset against other local land charge service costs.'
- 5.38 Demand needs to be taken into account in calculating the total service cost. This will obviously fluctuate and decisions will have to be based on estimated demand. The statutory guidance recommends the use of experience and information from the past. Forecasting methods vary but the guidance suggests 'registering authorities may wish to gather data from the past five years, and then calculate a moving average to estimate future demand.' The Council does not have data for that period of time.

Methodology for and setting of specific fees

- 5.39 In specifying the fees for the defined services and descriptions of services, the Council has to adopt a methodology. The statutory guidance at page 9 states 'The simplest method would be to divide the total cost by the expected number of unit outputs in the year and specify the result as the fee.' But it goes on to state that 'this approach may need to be refined. First, registering authorities may need to allow for fluctuations in demand for the services by taking one financial year with another. Secondly, they may wish to group services or descriptions of service. Thirdly, they must act within their powers.'

- 5.40 The guidance states that 'registering authorities may initially find it useful to consider assessing the cost of providing a service, the projected take-up of that service, and thus the charge that should be made, over a period of between 1 and 3 years.'
- 5.41 Unfortunately, the 1975 Act fails to define how many previous years should be taken into account as regards the requirement to take 'one financial year with another'. This requirement 'means that a registering authority should take account of surpluses and deficits in the current and previous years in setting fees for the forthcoming year so that over time, income does not exceed costs.' But it is important to understand that the service or grouping choice is a factor as 'where a fee has been set at a level below cost, any shortfall in fee income from that service or group of services cannot be met by charging fees that would over-recover costs for another service, descriptions of service or group of services.'
- 5.42 As the guidance states, grouping is 'a new concept in relation to fees for local land charges services. The 1975 Act does not provide a definition of a group of services or impose any restrictions on local land charge services or descriptions of service that can be grouped for these purposes. All that is required is that services or descriptions of services grouped are services or descriptions of service in respect of which fees can be set by the registering authority under the 1975 Act.' Clearly, grouping can avoid artificial divisions between services etc. and allow the sharing of common costs.
- 5.43 Where services or descriptions of services or groups are selected, the Council has to impose the agreed fee on all users of that service etc. i.e. it cannot exempt some users from payment and demand payment from others. The statutory guidance confirms this and points out that any Council exceeding its powers would be exposed to judicial review.
- 5.44 I therefore propose that the services and description of services should attract the fees as set out in the right-hand column of the Appendix to this Report with effect from and including 1 April 2007 until further notice.

Determining how fees should be published

- 5.45 There is a legal requirement for the Council to specify the date on or after which the fees will be payable.
- 5.46 The statutory guidance states that there must be advance notification and publication of the details of the fees (giving a clear description of each service etc) 'a reasonable time before they come into force and, as a matter of course, at the beginning of each financial year'.
- 5.47 It also suggests that the Council 'may also wish to indicate the manner in which fees should be paid: for example, in advance rather than within, say, seven days of the delivery of the service.'

5.48 In addition, the statutory guidance does make clear that the Council should be able to explain how the fees were arrived at and as a result the guidance further suggests that it 'may be helpful for the published fees to be accompanied by an outline of the calculations used.' In any event, it goes on to say that 'the outline of the calculations used to reach the published fees should also be available on request.'

5.49 Unfortunately, there is no explanation as to what is meant by publication in that the 1975 Act does not specify where the fees must be published. The guidance talks about accessibility and says that it would be 'helpful to publish the fees on the authority's website and in a prominent position in the place where local land charges business is conducted'.

6. RECOMMENDATIONS

6.1 That the Council provides the services and descriptions of services in the Appendix to this report and levies the fees as set out in the right-hand column of the said Appendix with effect from and including 1 April 2007 until further notice

6.2 That the Council publishes details of the said services and descriptions of services and fees relating thereto in the Civic Centre and on the Council's website as soon as possible

7. BACKGROUND PAPERS / DOCUMENTS REFERRED TO

Guidance for Registering Authorities on Setting Fees for Local Land Charge Services in England see <http://www.official-documents.gov.uk/document/cm70/7026/7026.pdf>

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