

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Cabinet
AUTHOR/S: Principal Solicitor

16 April 2009

THIRD PARTY ACCESS TO PROPERTY REGISTERS AND INFORMATION & REVIEW OF CHARGES FOR PROPERTY SEARCHES

Purpose

1. The report explains the implementation of the Local Authorities (Charges for Property Searches) Regulations 2008 (the Charges Regulations) and how these legislative changes impact on the Council including the fees that can be charged for supplying property information.
2. The report explains the calculation of fees for searches and access to property data on a cost recovery basis and seeks authority to introduce these new fees in accordance with the Charges Regulations, and to amend the current land charges fees policy for 'official' searches dealt with by the Land Charges team.

This is not a key decision but involves a change in policy and fees charging as a result of legislation.

Background

3. There are 2 elements to any property search:
 - (a) a search, against an address, of the Local Land Charges Register (LLCR) and,
 - (b) enquiries about a particular property or piece of land that can be made of a local authority based on a statutory form known as 'CON29' enquiries.
4. There are 2 ways search are undertaken: searches by third parties, usually Personal Search Companies (PSCs); and 'official' searches further to requisitions submitted, usually by solicitors, for a search to be produced in a tailored report format by the Local Land Charges team (LLC) having searched the LLCR and collated information from planning, building control and health & environmental services relating to CON29 enquiries.
5. The key change in the law means that from 6th April 2009 third parties must be given access to such information as may be held by the local authority, in order for the third party to produce a fully informed search report for their client. This change is brought about by the Charges Regulations which came into force on 23rd December 2008 and is an attempt by the government to introduce a level playing field following the OFT investigation into the property search industry and competition between the private sector and local authorities in the provision of property searches which are a key part of the conveyancing process.
6. There is no change to the way that 'official searches' are produced but there are changes which affect the way in which the fees for those searches are calculated.

Considerations

7. Private search companies inspect the LLCR in the land charges department and make notes of any entries in the LLCR affecting the property which they are searching against. This arrangement and the statutory fee for inspection (£11) remain unchanged by the Charges Regulations. In relation to CON29 enquiries personal searchers have in the past, for properties within the South Cambridgeshire area, obtained a certain amount of planning information from the SCDC website, together with a certain amount of building control information direct from the Building Control team.
8. Personal searchers have had the benefit of insurance against claims for deficient searches i.e. where they could not access information. From 6th April this insurance is no longer available and personal searchers must obtain replies to those CON29 enquiries made by their clients.
9. The fee for an 'official' search of the LLCR is not fixed by statute. It has been fixed in the past at £6.00. SCDC continued to charge that level of fee and now seeks to revise it in accordance with the Charges Regulations.
10. In the majority of cases an 'official' search request is for a combined search (full search) of the LLCR and CON29 Enquiries. Some of the CON29 enquiries are required ('CON29R') and some are optional (CON29O). Occasionally requisitions for official searches are for a search of the LLCR only. The LLC impose further additional charges for additional enquiries; duplicate searches and where there are additional parcels of land searched against for a single transaction the costs of the search can be discounted. All of these charges have been reviewed in light of the Charges Regulations and are set out in the attached Table A for approval.
11. **Calculation of Fees:** The Charges Regulations provide for calculation of 'official' search fees to be done on a costs recovery basis. In relation to the costs for providing access to third parties the related Guidance issued by CLG outlines a complex methodology for calculating fair and transparent charges for providing access to property information/data held by the local authority. Any charges imposed, including internal recharges from departments to LLC must not exceed the costs to the authority of granting access to property records. Over a period of three years the Council must ensure that the total income from charges does not exceed their total costs. Where the authority has made an under or overestimate of the unit charge it must take this into account the following year.
12. Officers have found that currently there is no identifiable additional activity being carried out by planning, building control or health and environmental services to maintain and update baseline data specifically for the purposes of providing access to a third party to answer the CON29 enquiries. It appears that all maintenance and updating of data is being done in any event. Therefore, it would not be lawful to allow a charge for any element of that to be included in the charges for allowing access to third parties.
13. Officers have, in relation to personal searches, considered the time that will be taken up by staff in facilitating the access to property information by third parties. In accordance with the guidance officers have produced a menu of charges for access to individual data items. These are set out in the attached document "Schedule of Registers/Information for Local Enquiries Search." Members will note that these charges are minimal as much of the information is already free and publicly available on the SCDC website (eg planning records); some of it will be quickly accessed by

staff where the information has already been captured electronically (eg building control records from 1994 onwards) and other elements will be provided under the regime of the Environmental Information Regulations (see para 16 below).

14. In accordance with the Charges Regulations finance officers have worked up revised costs for official searches of the LLCR and CON29 enquiries by dividing a reasonable estimate of the likely total costs to the Council in granting access to property records during the financial year by a reasonable estimate of the number of requests for access to property records likely to be received over the same financial year.
15. "Costs" are defined as 'any costs to the local authority (including related salary costs and the costs of the creation and maintenance of records) reasonably incurred in connection with complying with a request for access to property records. Costs for granting access to free statutory information and the maintenance of such information are not recoverable in the charging regime.
16. **Environmental Information Regulations 2004 (EIR):** The Charges Regulations and related Guidance have no effect on the operation of EIR. The Guidance states "it is possible that some of the information required to complete a search may be 'environmental information'...in which case the EIR regime would apply." Officers have taken a view that some of the CON29 questions do concern EIR and this is reflected in the charging regime set out in the attached Schedule. Officers understand that a group of personal search companies have lodged an appeal with the Information Commissioner challenging an authority's failure to provide property information under EIR. The result of that appeal is expected shortly and may have a bearing on how some of the other property search information is provided. Officers will advise if further changes are needed to take account of this decision.

Options

17. A review of the fees for an 'official' search is essential to comply with the Charges Regulations.
18. It is open to Cabinet to decide not to impose any charges for access by third parties however it is thought that the charges specified on the attached schedule can be justified as reasonable and fair in light of the principles set out in the Charges Regulations. There will be a cost to the authority in arranging for access by PSCs.

Implications

20. There are difficulties in predicting with any certainty what the financial implications of this new schedule of charges will have on the annual revenue of the Land Charges service. The opening up of the search market to competition, the recent downturn in the economy and the resultant decline in the housing market have all played a part in determining search activity levels.
21. As a basis for calculating a unit charge it was decided to use the search activity levels between January and December 2008. Using these numbers along with the proposed schedule of charges, it is envisaged that an income level of circa £271,000 will be generated. This can be shown in direct comparison with what was estimated at the budget setting time - £244,000, calculated using the current pricing regime and activity levels, as an increase of £27,000 in revenue.
22. The table below shows a direct comparison between what is proposed will be charged on a cost recovery basis with what is currently being charged:

	Current Charge	Proposed Charge	Difference
LLCR1	6.00	62.10	> 56.10
Con29R	127.00	63.50	< (63.50)
Full Search Fee	133.00	125.60	< (7.40)

Bringing the constituent elements of the full search fee to an equitable level should result in increased levels of revenue to the Authority whilst not conflicting with the fundamental principle of cost recovery.

23. To demonstrate: between January and December 2008, there were 694 requests for an LLC1 certificate alone, which under current charging policy would produce an income to the Authority of £4,164 (694 x £6). Under the proposed new charging policy of cost recovery, it would produce £43,097 (694 x £62.10) an increase of £38,933. Set against this would be the loss of income from Con29R only requests at £63.50 per request. However in comparison these are few in number, just 39 in the same period which would equate to a loss of income of £2,477. The reduction in revenue by reducing the full search fee by £7.40 equates to approximately £12,800 based on the number of full searches between January and December 2008 so it can be seen that the increased level of fee income £27,000 quoted is reliant on the number of LLC1 only requests being comparable to those between January and December 2008.

24. Financial	Please see above.
Legal	The change to the regime is the result of legislation. Further legislation is expected to review the statutory fee for a personal search of the LLCR.
Staffing	No immediate implications. It is possible that the new regime will increase the number of personal searches being carried out which may impact on the level of work coming into the land charges team through NLIS. The position will be monitored.
Risk Management	The level of searches will need to be carefully monitored to ensure that cost recovery is maintained. Any changes to costs will need to be transparent and based on evidence.
Equal Opportunities	No implications

Consultations

19. The Land Charges team have consulted with colleagues in finance, planning policy, development control, building control, health and environmental services and at the highway authority. In addition, the Principal Solicitor has met with one of the major PSCs to explain the menu of charges for access by third parties.

Effect on Strategic Aims

20.	Commitment to being a listening council, providing first class services accessible to all.
	In producing a comprehensive menu of information available to third parties the Council is providing a first class service to PSCs.
	Commitment to ensuring that South Cambridgeshire continues to be a safe and healthy place for all.
	The changes aim to make the costs more transparent and to ensure the consumer receives all information relevant to the property.

Commitment to making South Cambridgeshire a place in which residents can feel proud to live.
Type here
Commitment to assisting provision for local jobs for all.
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Commitment to providing a voice for rural life.
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Conclusions/Summary

21. The main changes are as follows:
- (a) Local authorities must now provide access to all information required to complete a property search including information not found on public registers.
 - (b) Private search companies will no longer be able to obtain insurance cover where information is missing or they have not sought access to it.
 - (c) Third parties can only be charged on a cost recovery basis. This cost must be the same whether the information is supplied to the LLC or the PSC.
22. Officers will monitor numbers of enquiries being received in order to assess the need for any review of the charges within the three year period to ensure that charges do not exceed costs.

Recommendations

23. That Cabinet approve the menu of charges set out in the attached schedule of registers/information for local enquiries search being the charges payable by third parties for access to that information.
24. That Cabinet approve the changes to the charges for an 'official' search and CON29 enquiries with miscellaneous related charges set out in the attached Table A.

Background Papers: the following background papers were used in the preparation of this report:

The Local Authorities (England)(Charges for Property Searches) Regulations 2008.
 Local Authority Property Search Services – Costing and Charging Guidance issued by CLG January 2009.

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