
LOCAL LAND CHARGES – INCOME AND FEE VARIATIONS

**Responsible Cabinet Member - Councillor Chris McEwan, Efficiency and Resources
Portfolio**

Responsible Director - Paul Wildsmith, Director of Corporate Services

SUMMARY REPORT

Purpose of the Report

1. To advise Members of developments in relation to the legal position for charging and approve a revised approach to charging for the service.

Summary

2. By letter dated, 27 July 2010, the Government notified local authorities that the £22 statutory personal search fee would be revoked. The reason for this was because the Government believed that the fee was incompatible with the Environmental Information Regulations (EIR). Local authorities were advised to cease charging this statutory fee immediately and to take appropriate steps to notify those who paid this fee after EIR came into force on the 1 January 2005 with a view to dealing with potential refund claims.
3. From 1 January 2005 until 29 July 2010, 8,965 personal searches were undertaken. The income received from the statutory personal search fees charged during this period was £104,896.
4. The Local Government Association has made representations to Government that the Government ought to meet the cost of any refunds due rather than local authorities. This is because the fee was statutory and was not subject to any local discretion about whether it ought to be charged.
5. This Council like many others set discretionary personal search charges. As a result of recent developments there is also the possibility that we will receive claims for the repayment of discretionary personal search charges. Since April 2009 (when we first set charges) we have received £21,201.13 (to 9 August 2010).
6. As a result of these developments we need to reconsider the way in which we have historically provided information of this type. It is proposed that we suspend charging the discretionary search fee for the time being.
7. In the light of these developments the charges for full local authority searches have been reviewed, see Appendix A. It is proposed that the Council introduces revised charges from Wednesday 15 September 2010.

Recommendation

8. It is recommended that :-
 - (a) Cabinet note the recent developments in relation to property search information and the financial impact.
 - (b) Cabinet approve the revised approach to charging outlined in the report.

Reasons

9. The recommendations are supported by the following reasons :-
 - (a) They allow the Council to respond to current developments in relation to personal search charges.
 - (b) They enable the Council to recover the costs involved in providing information that can be lawfully charged for.

Paul Wildsmith
Director of Corporate Services

Background Papers

Letter dated 27 July 2010, from The Information Rights Team of the Department for Environment, Food and Rural Affairs (DEFRA), to the Chief Executive.

DEFRA Guidance, of July 2010, entitled Charging for Environmental Information under the Environmental Information Regulations 2004.

Luke Swinhoe: Extension 2055

S17 Crime and Disorder	There are no issues arising directly from this report that relate to crime and disorder.
Health and Well Being	There are no issues arising directly from this report that relate to health and well being.
Sustainability	There are no sustainability issues.
Diversity	The content of this report impacts equally across all groups
Wards Affected	All wards equally affected
Groups Affected	All groups equally affected
Budget and Policy Framework	There is no change to the Budget and Policy Framework as a result of this report
Key Decision	Not a key decision
Urgent Decision	Not an urgent decision
One Darlington: Perfectly Placed	This report has no particular impact on the sustainable Community Strategy
Efficiency	This report is designed to respond to the changing legislative position in a way that limits the impact on the MTFP as far as possible.

MAIN REPORT

Information and Analysis

Back ground Information

10. The Council holds a range of property and environmental information. The information is held in a number of Council teams including Local Land Charges, Planning Services, Highways, Building Control, Public Sector Housing and Environmental Health.
11. For land and property transactions getting information about the land or premises is an important part of the process. This information can be obtained in a number of ways; by a local authority search, through a personal search company (who approach the local authority for the information) or directly by making a request for information. A local authority search is a search compiled from registers and other information held by Council Departments about a property or piece of land. The information compiled as a result of the search is backed by insurance in the event of a mistake being made. A personal search is normally undertaken by a personal search company, from information they have obtained from the local authority. The personal search company sells on this information to their customers. Some property search information must be provided without charge (information that is held on public registers), and for other information a charge, at the discretion of the local authority, and subject to law (more details below) can be made.

Personal Searches

12. Until the 6 April 2009 personal search companies tended not to provide their clients with as much search detail as the full local authority search, but instead would mostly undertake a more limited search. In doing this they were able to rely on insurance provided by Government to cover the risks that arise from conducting a less comprehensive search. The Government withdrew the insurance from 6 April 2009 and as a consequence personal search companies sought additional information when compiling a search.
13. On the 23 December 2008 regulations (The Local Authorities Charges for Property Searches Regulations 2008) were introduced that allowed a local authority to recover the cost of providing access to some classes of property information. This was a discretionary power and local authorities were not bound to introduce charges.
14. Like the majority of other local authorities, from April 2009, we introduced charges for providing property search information (other than information that must be provided without charge –such as that held in public registers or lists of environmental information).
15. The issue of access to property search information and in particular charges for property search information is a complex issue. The Environmental Information Regulations 2004 (EIR) provide a right of access to ‘environmental information’. Some personal search companies have claimed that EIR applies to all property search information and that they should have a right of access to this information, without charge. The EIR require local authorities to progressively make environmental information available to the public by electronic means and to take reasonable steps to organise the information it holds in a way that allows active and systematic dissemination to the public.

16. If all property search information is 'environmental information' the Local Authorities Charges for Property Searches Regulations 2008 (which enabled local authorities to set charges for providing personal search information) would have been introduced on the basis of a fundamental error, as the matter was already covered by EIR. In the event of conflict, EIR would take precedence over other legislation as its source was based in European law.
17. What Personal Search companies tended to overlook was that the EIR does itself allow reasonable charges to be levied. However EIR do not allow charges to be made for information contained in public registers or contained in environmental lists or when it is inspected in person at a public authority. Reasonable charges are allowed when information is supplied through the post or electronically, or if, following a personal visit, photocopies are requested.
18. The issue of the applicability of EIR to property search information has been subject to challenge and has been considered by the Information Commissioner (ICO). The Information Tribunal had also previously determined in a case decided in 2006 that only limited charges could be levied when providing information that was covered by the EIR. In July 2009 the ICO published Guidance to the effect that all property search information was in its view covered by the EIR. Following the issue of this Guidance the Local Government Association have taken up the matter and have also made representations with Government.
19. While this activity was on going and given the state of confusion about this area the issue of discretionary personal search charges was identified as a potential budget pressure but following consultation with the Portfolio Holder, the Director of Corporate Services decided not to vary the charges until the position became clearer.
20. Under the regulations a statutory fee for personal searches has been payable, which was set by Government. It had been £11 for a number of years and from the 1 January 2010, the fee was varied to £22, by statutory instrument. As a result, from that date the personal search fee was also varied in Darlington to that amount. We had no discretion but to charge this amount as it was a statutory fee.
21. Following the change of Government in May 2010, there has been a discernable change of direction in relation to the approach to property searches. Home Information Packs (HIPS), were suspended from 21 May 2010. This simplified the process of bringing a property onto the market. By letter dated 27 July 2010, the Information Rights Team of the Department for Environment, Food and Rural Affairs (DEFRA) notified all local authority Chief Executives that the Government believed that the £22 personal search fee was incompatible with the EIR and advised local authorities to cease charging the fee with immediate effect. We ceased to charge the £22 fee as of 29 July 2010. This change of approach can perhaps be seen in the context of the Governments transparency agenda and intention to make more public sector information available, but it has had a direct impact on Local Authority budgets in addition to other cuts.
22. The DEFRA letter advises local authorities to consider bringing a potential refund to the attention of those who were wrongly charged after the EIR came into force on 1 January 2005. Local authorities are advised to consider what evidence would be required to establish a claim for a refund and also the issue of whether a personal search company who has passed on the cost of the fee might be unjustly enriched.

23. From 1 January 2005 until 29 July 2010, 8,965 personal searches were undertaken. The cost of refunding all of the personal search fees charged during this period would be £104,896.
24. The DEFRA letter does not consider the point that the fee itself was a statutory fee and that as such was not subject to any local authority discretion about whether or not it ought to be charged. Because of this the Local Government Association (LGA) has made representations that Government ought to meet the cost of any refund and provide appropriate compensation for local authorities.
25. The DEFRA letter acknowledges that under EIR local authorities are able to continue to make reasonable charges for information that is supplied, rather than inspected in person (in which case it should be provided free of charge). In late July 2010 DEFRA issued Guidance, entitled Charging for Environmental Information under the Environmental Information Regulations 2004.
26. The income received from the discretionary personal search charges that have been made since April 2009 is £21,201.13 (to 9 August 2010). A number of personal search companies have previously indicated that they dispute the right of the Council to levy a charge for the provision of property search information as it was 'environmental information' within the meaning of EIR and should be made available without charge. They may therefore also claim for repayment of discretionary personal search charges in addition to claims for repayment of the statutory personal search charge. There also remains uncertainty about what level of charges can be lawfully made for EIR. It is proposed that we consider any claims made for repayment on a case by case basis.
27. These changes have led to a review of the way in which we have approached land searches. Traditionally many local authorities have been able to generate income from providing property search information, this has inevitably coloured the way in which the service has been delivered. Recent developments, including the scrapping of the statutory fee, the possibility of challenges to discretionary charges and the difficulty of setting charges for the provision of property search information, have made it more problematic to set charges for the provision of property search information. The approach of the Information Commission, DEFRA, the new Government, and the underlying premise of the EIR all indicate the need for a change of emphasis. The model that we need to embrace is based on the premise of transparency, openness and accessibility.
28. One of the matters raised by the DEFRA Guidance on charging is the obligation on public authorities to support the public in seeking access to information and that they ensure that practical arrangements allow the right of access to information can be effectively exercised. From 1 January 2005, EIR has required local authorities to progressively make environmental information available by electronic means which are easily accessible and to take reasonable steps to organise information with a view to the active and systematic dissemination to the public.
29. Ideally the provision of all property information should be made available online. Moving to this model will not be possible overnight. The information that is wanted by property search companies is contained by a number of different Council Teams, some of the information is held in non electronic formats and is not currently available on line. Planning decisions will be available on line shortly. Further work will need to be done to see how other property search information can be made available on line.

30. The current model for the supply of information has been based on search companies attending to view some information in person and requesting other information which has then been provided via Legal Services from information drawn from the relevant Council Teams. It is proposed to keep this model for the time being but to suspend making charges for the supply of environmental information supplied for personal searches. In the event that personal search companies seek significant additional information (because they are no longer paying for it and therefore not under any cost constraint) personal search companies will be advised that we will seek to provide the information as soon as possible but that depending on volume and workload it may take up to 20 working days (the EIR time limit) to process the request. The issue of charging for environmental information will also be kept under review.
31. The impact of no longer making charges for personal search companies will result in a loss of income to the Council. Based on transaction levels of 1,718 personal searches (2009/10 volumes) we will lose £37,796 from the statutory fee of £22 being withdrawn and £15,900 from ceasing to make discretionary charges from personal search information. If there is a resurgence in the housing market the loss of income will be greater.

Full Local Authority Searches

32. Historically local authority searches (a property search supplied directly to a company or member of the public for a fee, rather than one undertaken by a personal search company) had the majority share of the property search market and personal searches had only a small proportion. Over the last few years the balance has shifted to personal search companies. There has been a growth in the personal search companies, and their share of the property search market. In particular the introduction of Home Information Packs (HIPs) and the role of personal search companies in the compilation of the HIP product led to personal search companies dominating the property search market. The changing market conditions over recent years have also created a significant reduction of overall property transactions for both local authority and personal searches. As a result the income generated from local authority searches has fallen.

Year	L.A. Searches	Personal Searches	Income
2007/8	1,709	2,218	£241k
2008/9	659	1,838	£85k
2009/10	496	1,718	£114

33. The proposed change of approach to the provision of property search information will mean that personal search companies will reduce their operating costs and potentially can choose to reduce the charges they make to their customers for searches. If this occurs then there is likely to be a further shift in market dominance to personal search companies and there will be a consequent reduction in local authority searches.

34. Since 2007 a HIP was required for new properties coming on the market, this was suspended by the Government on 21 May 2010. Now that HIPs have gone it is anticipated that local authority searches, if set at the right price could be more attractive. What is proposed is a significant reduction of the current fees charged for the provision of a local authority search. We also aim to promote the provision of the service by e mail and to offer electronic payment methods in order to provide a more customer focussed service. The aim behind this is to seek to make the local authority full search more attractive and to increase the share of the overall market.
35. The current cost of a local authority standard search by post or DX is £129 (all details of current charges are set out in Appendix A). There are some variations in the charges depending on whether the service is provided electronically and depending on whether a standard search is requested or particular components. The charges have not been varied since 15 December 2008.
36. Since 1 April 2007 Local authorities have been required to set fees on the basis of the cost of provision and are not allowed to make a profit from charges.
37. In a market where transactions have diminished and there is uncertainty about the future of property prices and activity levels, predicting volume is difficult. The RICS survey for July 2010, noted an increase in supply because of the abolition of HIPs but that more surveyors were seeing prices falling than rising. There was some optimism in the survey that activity levels would rise as property prices become more realistic, but it was also recognised that there are also constraints on the availability of mortgages and additionally that the fear of unemployment is puts off some people from making house purchase decisions. In Darlington, the estimate of total number of property searches that has therefore been used is reflective of a continuing depressed property market, which has slightly less activity than previously, this estimate is 2000 transactions.
38. It is difficult to determine the appropriate fee level in the light of recent changes. If we continue to charge at the current rate we can assume that all information will be provided via personal search companies at no cost. If we pitch it too low we not only affect our income levels but also run the risk of being anti-competitive. An analysis of our costs by the finance team has identified a reduction in staff and management costs. This is likely to fall further in the forthcoming months reflecting other changes in the Council. On the basis that we can increase market share by reducing the price and making the proposed improvements to customer service to a level of 1,000 transactions in the next year, a price of £69 for a local authority standard search would be at a break even point on the cost of provision. However as we do not know what the levels of transactions will be or whether there will be further information about how charges are to be levied. It is therefore proposed that the fee be set at £69 for a standard search and that the Director of Corporate Services will set the scale of specific charges to respond to the market, the cost of providing the service and the changing national picture under existing delegated powers. Any decision will be made in consultation with the portfolio holder.

Outcome of Consultation

39. There has been no consultation about the contents of this report other than internal.