



NORTHAMPTON
BOROUGH COUNCIL

Name of Committee	CABINET
Directorate:	CHIEF EXECUTIVE
Corporate Manager:	FRANCIS FERNADES
Date:	2 nd JULY 2007

Report Title	Land Charges LLC1 Search Fee
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Key Decision	Yes
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1. Recommendations

To increase the LLC1 Search fee from £6.00 to £26.00

2. Summary

The Land Charges department provides an essential service to the people of Northampton, providing formal information contained in Property Searches.

This information is provided by means of the LLC1 Certificate and the CON29 forms, collectively known as a Local Search. The section also provides Personal Searches to Private Search Companies (PSC's) who wish to inspect Public Registers at a reduced statutory fee. Contained within a Local Search will be past and current information relating to a particular property. Members of the public normally request a Search when purchasing a new property through the services of a Solicitor / Conveyancer.

3. Report Background

The Land Charges Section reply to local search requests, from people who are proposing to buy property in Northampton. The full local authority search is split into two documents the LLC1 (Local Land Charge Certificate, the form to carry out a search of the Land Charges Register) and the CON29 (Form of Enquiries). The LLC1 reveals the charges on the Land Charges Register eg. Conservation Area, Smoke Control Order, Tree Preservation Order etc and is statutorily required for search purposes however the CON29 is optional although a large amount of data is collated in the CON29 form which is invaluable when purchasing property.

The cost of providing the LLC1 by local authorities has not previously been evaluated, but has been set by Central Government at a fee of £6.00 (since 1st April 2003) per request by Statutory Instrument .

With effect from 1st April 2007 the LLC1 fee has been deregulated by legislation, this enables local councils to set their own fees putting responsibility onto Local Councils to set them 'at a cost recoverable rate' this enables the council to charge an appropriate fee for the provision of the LLC1, however it is still not permitted to make a profit, this acknowledges that the cost of providing the LLC1 is often higher than that previously set by Statutory Instrument. An update outlining the background and context attached at Appendix 1.

In April 2007 as an interim measure the LLC1 fee remained at £6.00 pending the results of a costing/timing exercise. This exercise has now completed and, in consultation with Finance, it has been concluded that it costs the Council £26.00 to produce each LLC1 request, as supported by the attached costing spreadsheet (column 3 headed LLC1) where it is clear that this sum is an appropriate charge.

4. Options and Evaluation of Options

The LLC1 fee has been deregulated with effect from 1st April 2007 by the Constitutional Reform Act 2005, and Statutory Instrument 1693/06. This legislation , gives the Council power to amend the process whereby land charge fees are raised , but limits the charges to a costs recovery basis only

Options

1. **Set a fee of £26.00** which would reflect the actual cost of providing the LLC1 evaluated by costing/timing exercise at £26.00 this will need to be evaluated annually and set accordingly. The accounting analysis giving rise to this figure is contained in Appendix 2.
2. **No change.** If the Council were to keep the existing fee of £6.00 (the amount which was previously set by Central Government), the council would miss an opportunity to set an increased fee, which can be justified by the exercise undertaken, this option does not take into account the actual cost of providing the LLC1.
3. **Increase beyond the proposed sum.** Set a higher fee than £26.00, this would leave the Council open to challenges from private companies who are in competition .

Recommendation

Option 1. **Set a fee at £26.00** the actual cost of providing the LLC1, therefore if challenged the fee can be detailed as actual cost and appropriate

5. Resource Implications (including Financial Implications)

- 5.1 There are two ways to reply to the LLC1 (1) by submitting a Form to the Land Charges Section or (2) by making an appointment for a Personal Search of the Land Charges Register. Personal Search companies who currently submit LLC1 requests are possibly going to switch to requesting Personal Searches, however these are statutorily set at £11.00 - no loss of income to the Council is anticipated.
- 5.2 Increased demand for Personal Search requests will increase the service pressure on staff to attend appointments in reception.

6. Risk and Opportunity Issues

- 6.1 There is an opportunity to increase income as it is anticipated that Personal Search Companies will switch to requesting Personal Searches in favour of LLC1 Searches, which is an increase of £5.00 per request.
- 6.2 Increasing the fee as recommended is likely to result in the recovery of actual costs to provide this service.
- 6.3 Personal Search Companies may challenge the fee set. However, a robust costing exercise has been undertaken, which justifies the increase in the fee.

7. Consultees (Internal and External)

Internal	Finance department Legal department
External	Local Land Charges Institute

8. Compliance Issues

A: How Proposals Deliver Priority Outcomes

Recovery Plan
Complies with objective to 'Strengthen our financial management'
Corporate Plan
Complies with objective to 'manage the Council's finances effectively'

B: Other Implications

Other Strategies
Joint working within the Council

Finance Comments

A costing / timing exercise has been conducted by the Land Charges section, thus enabling Finance to calculate the cost of providing this service.

Legal Comments

The Council now has the power to set the LLC1 fee to comply with the Constitutional Reform Act 2005, and Statutory Instrument 1693/06. This enables The Council to set its own LLC1 fees at a cost recoverable rate.

9. Background Papers

Title	Description	Source
Local Land Charges Institute informative note. Guidance for fee setting .	Update for members of the Local Land Charges Institute Guidance for Local Land Charges Fee setting	Local Land Charges Institute Department for Constitutional Affairs

Sue Spencer, Land Charges Team Leader, ext 7617.

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APPENDIX 1

<u>Calculation of cost per process to be charged</u>	<u>CON 29</u>	<u>Nils</u>	<u>LLC L2</u>	<u>Personal Search</u>	
Total cost of service £	305,510.81				
Annual available minutes	369600				
Cost per minute for department £	0.8265985				
Activity	CON 29	Nils	LLC 1	Personal Search	
Time (in minutes) per activity	19	19	8	4	50
Transactions per activity average 2 years (From Land Charges Income information)	2,175	1,022	3,197	3,037	
Cost per activity £	16	16	7	3	
Total recovered Income £	34,800	16,352	22,379	9,111	82,642
Time spent on specific activities, minutes	41325	19418	25576	12148	98467
% of time spent on specific activities	26				
74% time spent on maintenance of Register					
Cost equivalent	223,783				
split on basis of time spent and no transactions for each process %	42	20	27	11	100
To be recovered £	93,989	44,757	60,421	24,616	223,782
Cost per activity £	43	44	19	8	
Total Cost per activity £	59	60	26	11	
Total Recovery					306,424
Notes:					
Cost per minute, allows for 2 hrs unproductive time per FTE per WK. 6 wks leave,2 wks sick & bank hols					
Cost per activity calculated, Cost per * time per activity, provided through time costing exercise					
Overall Maintenance of Register Calculated, and apportioned on basis of time on each activity					
Other Departments time included, at cost per hour					
Author: D Perryman (Finance) 14/06/2007					

APPENDIX 2



LLCI MEMBERS FEBRUARY 2007UPDATE

This update seeks to clear up any misunderstanding as to the current position and responsibilities for local authorities in respect of fee setting for the Local Land Charges service and provision of access to information.

Devolution of fee setting power for LLC1.

On 31 January the Department for Constitutional Affairs (DCA) published guidance for registering authorities on setting fees for local land charge services in England and its response to the consultation paper on draft guidance published in October 2006. The Guidance is intended to help registering authorities specify and publish fees for local land charge services, other than for personal searches of the local land charges register, which will continue to be set by the Lord Chancellor, with effect from 1 April 2007. This Guidance is issued by the Lord Chancellor under section 13A of the Local Land Charges Act 1975 and was circulated by LLCI to all members. **From 1st April 2007 it is the responsibility of each local authority to set their own fees for the LLC1 Search and associated local land charges register services.**

The Response and Guidance document are at:

http://www.dca.gov.uk/consult/land_fees/cp2506.htm

Annex B of the Guidance specifies the services for which a fee was set by the Lord Chancellor (please see page 13). Please see section 3 of the Guidance for an explanation of the services for which registering authorities may now set fees. It is important to note that the fees must be set to cover but not exceed the costs (please see section 6 of the guidance for further details on how to do this).

The fee for a Personal Search of the Local Land Charges Register remains at the statutory £11, and will continue to be set by the Lord Chancellor, until such time as an application for an increase is made to and approved by the DCA. The fee for a personal search of the local land charges register does not relate to fees for other land or property searches

As announced on 25 January by the Department for Communities and Local Government (DCLG) in *Home Information Packs Update: Towards 1 June* DCA will be working with DCLG to review arrangements for the setting of the fee for a personal search of the local land charges register and to prepare guidance on the setting of fees from property searches generally.

CON29 Fees.

The power to set a fee for providing replies to the CON29 Form Enquiries of a Local Authority is given to LAs by way of SI 1994 No 1885. Until such time as any official guidance is issued LAs should continue to set their fees for the CON29 in accordance with standard local government accounting practices normally the BVACOP(1) and SI 1994 No1885

Current position re:-Providing and charging for Access to information.

Providing Access to Information:- Local authorities should be working in accordance with the Guidance issued by the ODPM entitled "Personal searches of the Local Land Charges Register and inspection of other public records open for public inspection held by local authorities" published in February 2005.(2) LA's should be providing access to statutory registers and public records in accordance with Annex B of that Guidance.

Charging for access to information:- LAs maybe unclear of their ability to charge for access to non statutory registers and public records. Neither do they have a guide for calculating those charges. It is the view of DCLG that local authorities have the power to charge for this information. That charging advice is reproduced at the end of this document.

NB Existing guidance on access and fees also applies to County Councils

The Future re Guidance on Charging for replying to the CON29 and providing charging for Access to information.

Charging for Information:- The Government's response to the OFT report favoured allowing LAs to charge private search companies to recover costs to ensure that there is a level playing field between LAs and personal search companies. However, it was not clear whether this would be viable. Guidance was therefore commissioned to inform the final decision. The Government will:

- **seek tenders for the production for a final charging methodology and guidance by independent experts** to give a clear basis for taking that decision: and
- **review the setting of the fee for a personal search of the local land charges register** charged to personal search companies and individuals. *This is currently set by the Lord Chancellor at £11.*

Providing Access to Information:- At the same time a separate piece of work is being undertaken in order to update the existing ODPM guidance (see above) on access to information and that will go out for consultation.

There is no doubt that the Government want to see open access to data, and that they are of the view that where legal powers exist LAs can for this in accordance with SI 1994 No 1885. On that basis they hope all LA's will strive to meet this challenge as soon as possible.

NB Any new guidance produced will apply equally to County Councils

New Con29/Local Enquiry Form

A new Local Enquiry form will replace the existing CON29 form with effect from 1st June 2007. The content of new form is based on the existing CON29. It is hoped that the new form will be

released shortly in order to allow LA's and software houses alike to make the necessary changes to procedures.

NB Welsh Authorities it is hoped that the Welsh Assembly will take a similar line in the adoption of any guidance produced by the DCLG but it is a matter solely for the Welsh Assembly. You are advised to contact them direct for a current position statement.

What happens on June 1st 2007.

Until such time as the Government issues new guidance for fee setting and or access to information the existing SI 1994 No.1885 and good practice guidance "Personal searches of the Local Land Charges Register and inspection of other public records open for public inspection held by local authorities" remain the primary reference documents. Any charges made for access to information should be made having regard to these and BVACOP

The Government published a consultation paper at the end of January 07 "Home Information Pack Update :Toward 1 June" The paper seeks views on a number of **proposals**, the most significant of which, in this context is that, with effect from 1st June 2007 the HIP's package requires a full search, but under the transitional arrangements personal search companies will be allowed to continue to use insurance to cover off those parts of the search where they can not gain authoritative data within 14 days until April 2008.

NB. Final decisions on these proposals will be taken shortly and, after consultation which closed on 21 Feb, if appropriate the HIPs Regulations will be amended accordingly.

What must your local authority do now?

- 1 Identify the costs involved in providing the Local Land Charges Register Service and set the fees (3) to be implemented on 1st April 2007
- 2 Specify and publish those fees in accordance with the Local Land Charges Act 1974 Section 13A
- 3 Calculate the costs involved in providing the CON29 information and set a fee in accordance with SI 1994 No.1885
- 4 Decide upon an implementation date for the CON29 fee, many LAs are considering not implementing any new CON29 fee until 1st June 2007.

Notes

The CON29 is referred to as the local enquiries under the HIP Regulations

(1) BVACOP Best Value Accounting Code of Practice known to all local government finance officers.

(2) Personal searches of the Local Land Charges Register and inspection of other public records open for public inspection held by local authorities published in February 2005

(3) For a full list of the fees previously set by the Lord Chancellor see Annex B (pg67) of the DCA response paper "Local Land Charge Fees: Guidance for registering authorities on setting fees for the local land charges services in England" document published 31st January 2007

Department for Communities and Local Government

16 November 2006

Legal Basis for Charging by Local Authorities for Land Searches

Summary

1 The OFT set out a comprehensive analysis of local authority powers for property search information in Annexe E to its market study of September 2005. DCLG agree with the analysis in that report. In relation to dealing with CON 29 Parts 1 & 2 enquiries, in some cases a statutory right of inspection does exist (in some cases free of charge) but on the whole the provisions of the Local Authorities (Charges for Land Searches) Regulations 1994 ("the 1994 Regulations") provide the power to charge. Where this is not the case section 93 of the Local Government Act 2003 provides an alternative power enabling local authorities to charge for search information.

The statutory basis for charging personal searchers for information

2 Searches of the local land charges register are covered by a specific statutory regime under the Local Land Charges Act 1975. What follows therefore deals with the local searches commonly carried out in the residential conveyancing process using the CON 29 (Pts I & II) forms and access to the unrefined information to complete these enquiries. Under the Home Information Pack Regulations 2006, DCLG has prescribed specific questions for such local searches, which are based on the CON 29 (Part I).

3 There is something of a patchwork of powers relating to each question in the CON 29 Parts 1 and 2. In some cases there is a statutory right of public inspection (and for some this is specified to be a right of free inspection) but for the most part, access to the information is granted at a local authority's discretion and fees for access are also charged at an authority's discretion¹. In our view (and OFT's), the Local Authorities (Charges for Land Searches) Regulations 1994 ("the 1994 Regulations") provides the power to charge. Regulation 2 of the Regulations states:

¹ See paragraphs 1.4. and 1.5 of Annex E to the OFT study.

“A relevant authority may impose a charge in respect of answering enquiries—

(a) concerning the discharge of the authority's functions in relation to land which is, or is proposed to be—

(i) the subject of a transaction between third parties, or

(ii) offered for sale by a third party; or

(b) in connection with a transfer by the authority of any interest in land.”

4 Our view is that this provision allows a local authority to impose a charge in respect of someone else answering enquiries, providing that the enquiries concern the matters listed in paragraphs (a)(i) and (ii).

5 Even if this were not the case, section 93 of the Local Government Act 2003 would provide an alternative power enabling best value local authorities to charge for search information and all local authorities will be best value authorities. Section 93 provides that:

“(1) Subject to the following provisions, a best value authority may charge a person for providing a service to him if—

(a) the authority is authorised, but not required, by an enactment to provide the service to him, and

(b) he has agreed to its provision.

(2) Subsection (1) does not apply if the authority—

(a) has power apart from this section to charge for the provision of the service, or

(b) is expressly prohibited from charging for the provision of the service.”

6 Our view therefore is that local authorities have a statutory basis for charging personal searchers for information, and that basis is found either in the 1994 Regulations or section 93 of the Local Government Act 2003. We understand that in practice, it is the 1994 Regulations that local authorities tend to rely on when charging, but section 93 of the 2003 Act provides an alternative where they do not do so.

Department for Communities and Local Government

16 November 2006

Fee setting methodology

LLCI is aware that at the moment there is no formal methodology available to assist in identifying process and apportioning costs against such process.

In conjunction with the LA Stakeholders Group, LLCI have produced a series of Excel tables which set out some of the generic processes involved in the day to day service. We have also included a table of Budget Heads to help your Heads of Finance identify the true cost of the service and its various elements. These should help you to understand what is involved when looking at the various elements of the service and how to apportion time and costs against each.

These tables are by no means all encompassing. They are intended to give you a starting point by which you can begin to look at costs. There will be elements within the tables that are either relevant or irrelevant to your Authority and it will be up to you to decide which.

These spread sheets were circulated to all LLCI members in early February and are also available on the CNLIS Web Site – <http://www.nlis.org.uk>

High Street update.

As the high street prepares itself for HIPS it has become apparent (not unexpectedly) that many HIP providers have already been in serious discussions with search providers about cost and service delivery for the various required component documents including a search result (or local enquiry as the HIP refers to it).

Competition to be the local, area or national provider of the component parts of the HIP will be strong and in order for LAs to ensure their competitiveness in that market place we will need to ensure that the LA local search service matches that offered by the private sector.

In assessing the various media reports(*) on HIPS it seems that the high street is looking for a HIP priced at about £300 which includes a search report, some indications suggest that having taken into account the likely cost of the other component parts a search result would need to be priced at about £80 with a turnaround within 5 working days in order to meet not only deadlines for the compilation of a HIP but also to come within the target price for a HIP.

Round up

The OFT report recognised that the local search market is a competitive one. In order for the LA to meet the challenges of a competitive market place we need to operate as a business and as such have ensured that we have assessed the market and our ability to compete within it. That means looking closely at pricing structures, turn round times, quality of information, services supplied and assessing our strengths and weaknesses and taking any appropriate action. It is always easier to retain business than to regain what has been lost to a competitor. We are facing new business challenges in much the same way our Building Control colleagues did a number of years ago.

We appreciate that this is a change to the position we were expecting when the November Update was produced and **we would strongly advise** that you share this latest information with colleagues and Senior Management including Legal and Finance. It is vital that each LA fully understands the market place within which it needs to operate and all the issues which will determine how you meet those challenges and build a successful and competitive business.

The high street is well aware of the cost recovery principle that is to be adopted for the setting of the LLC1 fee, the CON29 carried out by the local authority and any access to information fees and will be free to challenge LAs if they feel that fees have been set unreasonably.

()Please note these are media reports LLCI is not in a position to be able to guarantee these figures.*

February 2007