

LOCAL LAND CHARGES FEES

1. INTRODUCTION

- 1.1 The maintenance of the Land Charges register and the provision of information to persons who wish to 'search' it is a statutory function of the District Council.
- 1.2 In the 2007/08 financial year there will be significant changes to the financial regulations, access to information governing the provision of search information, and the way in which the information is procured.
- 1.3 This report sets out the changes, explains their likely consequences and makes recommendation on how the changes can best be addressed.
- 1.4 Issues relating to the projected income from Land Charges were highlighted as part of the Financial Strategy. However, the situation has become much clearer in the last couple of weeks, with the emergence of market information in relation to the introduction of the Home Information Packs on 1 June 2007. This has meant that the Council has had to react urgently.

2. THE CURRENT SITUATION

- 2.1 A small team of three officers are supplied with a range of land charge information from various parts of the Council eg. legal and development control as well as other organisations such as the National Park Authority. They input and update this information onto a GIS computer data base. This is then used to provide information in a variety of formats when searches are received, mainly from solicitors and personal search agencies, when a property is about to be sold. Before an answer can be given, information is also sought from other bodies such as the County Council on highway matters.
- 2.3 There are three main types of property search. The first is the LLC1 which is a statutory search of the Land Charges register. It gives information about 'charges' which have been registered against individual properties, for example, is it subject to Council enforcement action? It is in a prescribed format and until the end of March 2007 the fee has been prescribed by the Lord Chancellor, currently set at £6.
- 2.4 The second type of search is the CON29 'Enquiries of Local Authorities'. It asks for details of, for example, current planning and building regulations applications, whether highways are maintainable at public expense and proposed nearby development schemes such as new roads. Under the Local Authorities (Charge for Land Searches) Regulations 1994, the local authority can set its own fees for providing this information and the charge for the current financial year is £150. Normally solicitors conducting a search of the local authority request the LLC1 and CON29 information for which the combined fee is £156.

- 2.5 The third type of search is the one carried out by individuals themselves or more likely by a personal search agent acting on theirs or their solicitors behalf. By giving the local authority 24 hours notice they are entitled to visit the offices and inspect the Land Charges register. The fee for this is again prescribed by the Lord Chancellor, currently at £11 plus £1.50 to supply a printout of the inspected records. In effect the information they get is the same as the LLC1 except that the local authority is not legally responsible for its accuracy. In practice this is irrelevant as both searches are drawn from the same database.
- 2.6 Whilst they are in the offices most personal search agents also collect as much CON29 information as they can by looking at publicly available databases such as the 'Planning register', the adopted Local Plan and Definitive Rights of Way maps. However some information provided on the CON29 is not available to them such as land to be acquired for road works, draft notices approved but not yet served and the location of radon gas affected areas. It is understood that personal search agents have insurance to compensate their clients if information they cannot obtain proves material to the purchasing decision. It is further understood that personal search agents typically charge in the region of £90-£100 for the information they can obtain compared with the £156 fee for a formal search of the local authority.
- 2.7 New Forest District Council is a very efficient Land Charge authority with almost all formal searches dealt within 5 working days (97%) and 99.7% within 10 working days which is the national benchmark. Notwithstanding this, it has been losing work to personal search agents over the past 3 years. In the current financial year the Council is expected to deal with about 5,300 full searches (LLC1 and CON29) generating around £776,000 of income and 1,350 personal searches generating around £17,000 of income. Any increase in the current 25% of personal searches clearly has a very significant impact on Council income.

3. THE PROPOSED CHANGES

3.1 New Financial Provisions

- 3.1.1 Changes in financial controls over the way local authorities can charge for searches have been under discussion since an Office of Fair Trading report was critical of the way charges were levied and the restrictions often placed on personal search agents. One major change has already been agreed and two others are still subject to consultation but are likely to be introduced in the 2007/08 financial year.
- 3.1.2 The change already agreed is that from April 2007 the Lord Chancellor will no longer set the LLC1 charge and this must be done by each individual local authority. Regulations prescribe that this must be on a fee recovery basis. Work is currently underway to establish the costs of this particular part of the service and initial indications are that the LLC1 fee should be raised to around £40.

- 3.1.3 In addition there has been much national debate on what local authorities can charge for providing CON29 information. The principle would appear to be that they will only be able to recover the cost of providing the service and will have to put in place detailed accounting practices to justify the charging levels. Detailed guidance is not yet available but pending this, work is still ongoing to identify the cost of providing this service.
- 3.1.4 It has also been suggested that local authorities should be allowed to set the personal search fee levels, again to recover their costs in providing the service. However, the Lord Chancellor is not sure if this will be viable and so he has commissioned further studies to inform his eventual decision. Until this is made the fee chargeable by all local authorities will remain fixed at £11 (plus £1.50 for a copy).
- 3.1.5 Until very recently the final outcome of these changing financial provisions was being awaited before any accurate prediction could be made about their impact on NFDC's budgets. However, it is now becoming clear that this will not be the main driver of the financial consequences. This will depend more on the second major change which is now described.

3.2 Home Information Packs (HIP's)

3.2.1. From 1 June 2007, under legislation already enacted and being trialled in several parts of the country including Southampton, house sellers will not be able to put their house on the market unless they have produced a Home Information Pack (HIP). This must contain the following information:-

- (i) Legal title to the property;
- (ii) What is included in the sale;
- (iii) A Home Energy Efficiency certificate; and
- (iv) Land Charge Search information.

An optional extra is a Home Condition Survey. Originally this was planned to be a mandatory requirement but this has been dropped.

3.2.2 This means that the stage at which a Land Charge Search will be carried out will change. Until now it was normally sought by a Solicitor before you exchanged contracts to buy a house. In future it will normally be sought by someone (or their agent) planning to put a house on the market.

3.2.3 There is considerable pressure from the Government and others in the property industry to keep the cost of these HIP's down.

3.2.4 In the Southampton trial various different types of organisation have put themselves forward as bodies who will produce the HIP's. They include Estate Agents, Solicitors and companies being set up specifically for this purpose. Many of these might be the personal search agents who have been taking an increasing share of the land charge search market in recent years. The 25% share of the market they have in the New Forest is low compared to other areas and in

some Districts up to 60% of searches are already being done by personal search agents. All NFDC Officers would like to think that this is due to the efficiency and timeliness of the service provided in this area.

- 3.2.5 Estate Agents are already working hard to establish how they will procure HIP's on behalf of prospective sellers after 1 June 2007. Very substantially this is known to be with personal search agents because they can provide a substantially cheaper (and in some cases a more timely) service than local authorities. Under current arrangements that will certainly apply in this District where a full search currently costs £156.

4. EVALUATION OF OPTIONS

4.1 Do nothing until the new financial rules are finalised and HIP's have come into operation.

- 4.1.1 This was the approach favoured until recently when it became clear that the impact of HIP's was likely to be greater than any change in the financial rules. In the very short term this approach will maximise Council income in the first two months of the new financial year. It might also be of some advantage if the introduction of HIP's was to be delayed. Apparently there are problems with the accreditation of the Home Energy Surveyors and some bodies are calling for delay until enough can be appointed to ensure the new system can be effectively introduced. However, on balance, the Government have invested a lot of kudos in the introduction of this measure. Their websites and publications are clear about 1 June 2007 being the start date and having already backed down on property survey requirements it is considered unlikely they will back down on the introduction date.
- 4.1.2 If the Council's current fee structure remains in place when HIP's are introduced, it is a reasonable assumption that there will be mass migration from full local authority search provision to the services provided by personal search agents working in partnership with the HIP's providers. It is likely that the Council could see a very rapid reversal of the current 75% local authority to 25% personal search ratio.

- 4.1.3 This reversal of the ratios will have a very dramatic effect on Council income as shown in the following example:

	Income £
2007/08 Estimate (based upon existing ratio's)	
4,200 full local authority searches @ £156 each	655,200
1,300 personal searches @ £12.50 each	16,250
	<u>671,450</u>
2007/08 Estimate (based upon a reversal of ratio's)	
4,200 personal searches @ £12.50 each	52,500
1,300 full local authority searches @ £156 each	202,800
	<u>255,300</u>

- 4.1.4 The projected annual position will be significantly improved if and when the Lord Chancellor agrees that local authorities can charge the full cost of providing for personal searches (see paragraph 3.1.4). In this case the cost of a personal search could well increase to around £40. In this case the income in the last example would rise from £52,500 to £168,000 giving a total income of £370,800.
- 4.1.5 Overall this do nothing in the short term option is not recommended. It is likely to give market forces free reign to undermine the Council's current position. The introduction of HIP's is likely to be the catalyst which triggers a major change in the procurement of searches and enable personal search agents to secure a major increase in market share. Also maintaining the high cost of CON29 replies is unlikely to be consistent with the new financial rules which we are awaiting.

4.2 Tackle the competition through a significant reduction in NFDC Search fees immediately

- 4.2.1 In this option the cost of a full local authority search will be reduced to £80 (£40 LLC1 and £40 CON29) with effect before the new HIP's are introduced. This will mean that sellers (or HIP's providers) will be able to get the fully comprehensive search product from the local authority at the target price. If the Council's service remains timely and efficient there is no reason why there would be any incentive for those procuring searches to change their current practices. We could reinforce this approach by waiving the charge if the completed search is not returned in 10 working days. If this option is adopted it should be accompanied by a publicity campaign to stress the advantages and value for money of obtaining a local authority search.
- 4.2.2 The financial appraisal of this option set out below assumes that the Council can maintain the existing ratio of 75% of full local authority searches at this substantial reduced fee. It also

looks at two different projections for personal search fee income depending on whether its setting is deregulated (£40) or not (£12.50).

	£	Income	£
4,200 full local authority searches @ £80		336,000	
1,300 personal searches at:			
(i) £12.50		(i) 16,250	
(ii) £40.00			(ii) 52,000
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	352,250		388,000

4.2.3 If the personal search fee setting is deregulated it is also likely to make the process much more marginal for companies or individuals to undertake. This could increase the market share of the full local authority option at the reduced price.

4.3 Other Options

4.3.1 Between the two options set out above there are a range of other options which could be adopted. Other Local Authorities are facing the same issues as this Council. Test Valley Borough Council and Portsmouth City Council have both taken steps to reduce their fees on CON29 enquiries. Other authorities are understood to be considering similar courses of action.

4.3.2 The balance which has to be struck is the impact of different charging levels on the market share which is retained for the provision of full local authority searches. This will also be substantially affected by the decision on whether or not to deregulate the setting of fees for personal searches and another proposal under consideration to give personal search agents access to all of the information currently only available in full local authority searches.

4.4 Overall the position is far from clear and a number of assumptions have been made in this report which can only be validated once HIP's have come into effect and the financial rules are finalised. However the overall premise of the recommendations is that to do nothing to change the current NFDC search fee levels is likely to result in a substantial loss of the current market share to personal search providers when HIP's are introduced.

4.5 In any event, the de-regulation with effect from 1 April 2007 in respect of fees for LLC1 searches necessitates the Council to set fees for such searches. Initial work undertaken suggests that a fee of £40 is not unreasonable.

5. FINANCIAL IMPLICATIONS

- 5.1 It will be obvious from this report that the changes in land charges will have significant financial implications for NFDC. All of the options will result in a significant loss of income but it is likely that delaying a response to this situation may result in greater financial consequences than taking a proactive approach before HIP's are introduced.

6. ENVIRONMENTAL, EQUALITY AND DIVERSITY AND CRIME AND DISORDER IMPLICATIONS

- 6.1 None are expected to arise from the changes described or any of the options for responding to them.

7. PORTFOLIO HOLDER COMMENTS

- 7.1 Given the recent changes within this area the proposals set out within the paper are a timely and measured response and I fully support them.

8. RECOMMENDATIONS

- 8.1 That with effect from 1 May 2007 the fee for a full local authority search be set at £80 (LLC1 and CON29).
- 8.2 That with effect from 1 May 2007, the fee for the LLC1 (alone) be set at £40.
- 8.3 That the fee be refunded if NFDC cannot respond to the search within 10 working days of receiving the request.
- 8.4 That work continues to define the full cost of the land charge search service and how this is broken down between its various components.
- 8.5 That a review of the situation be reported to Cabinet in October 2007 or sooner if the finalised financial rules along with the results at 8.4, suggest that the recommended approach is not sustainable.

For further information:

Chris Elliott
Head of Planning
Tel: (023) 8028 5310
Email: chris.elliott@nfdc.gov.uk

Background Papers:

The Local Land Charges Institute
February 2007 Update
Published Papers
Information obtained from
homeinformationpacks.gov.uk