

NORTH LINCOLNSHIRE COUNCIL

**CORPORATE SERVICES
CABINET MEMBER**

**REVIEW OF THE PERFORMANCE OF THE
LOCAL LAND CHARGES SERVICE AND
LEGAL SERVICES CHARGING POLICY**

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To review the performance of the Local Land Charges Service.
- 1.2 To amend the charges made by Local Land Charges and Legal Services.
- 1.3 This report is of an urgent nature because of the timescales involved in introducing the proposed charges.

2. BACKGROUND INFORMATION - Local Land Charges

- 2.1 During the current financial year (up to 28 February 2010) 1083 Official 'in-house' Searches (this figure also includes LLC1 searches) have been received. The total for the whole of the last financial year 2008/9 was 1,157.
- 2.2 Although another month is yet to be accounted for it can be seen that this years figures are broadly in line with last years although both years continue to be well below the levels recorded in the years prior to the downturn in the property market e.g. 2006/7 4,169. This continues to have an effect on the budget situation with Local Land Charges income reaching £95,577 at the end of period 11 (February) against a profiled budget of £112,024, a shortfall of £16,447.
- 2.3 The number of personal searches carried out by private search companies for the current financial year (up to 28 February 2010) stands at 2,056 which when contrasted for the whole of 2008/9 of 2,736 shows a marked down turn. It is not clear why this is so particularly given that the number of official 'in-house' searches carried out by the council remains in line with last years (as paragraph 2.1).
- 2.4 Out of the total number of searches handled by the Local Land Charges Service in the current financial year (up to 28 February 2010), the proportion carried out in-house is 35% against 65% personal searches. Last year the split was 30% in-house against 70% personal searches.

- 2.5 The number of searches received via the electronic hub has continued to fall with 173 received during the current financial year (up to 28 February 2010) when contrasted with 391 in the last financial year.
- 2.6 As in past years, the annual survey of local solicitors was undertaken in January. 55 questionnaires were sent with 11 responses received. 90.1% rated the service provided as either good or excellent. In particular, 5 felt the 'courtesy of staff', 'speed of response' and 'accuracy of information' to be excellent. Indeed, this was mirrored in one of the comments "Your staff are superb and very helpful".
- 2.7 On 'cost/value for money' seven rated good and two excellent whilst on 'turn around time' six rated good and five excellent. Additional comments received were:
- "We are torn with cost issues as this affects our client's cost and we are on fixed rates fee rates".
- "We tend to find Estate Agents promote their own "HIPS" and we are dealing with only a few instances where we now carry out our own searches".
- 2.8 Significantly during the current financial year (up to 28 February 2010) the Service has ensured that 100% of searches have met the Council's performance indicator of an eight working day turn around. Last year the compliance rate was 97.9%.
- 2.9 The Service can send and receive requests for information electronically to and from relevant service areas. In addition searches can now be received and transmitted electronically. Work on providing a full electronic service whereby the Service can extract the information itself from other services' databases is proceeding and is the subject of regular review by the Land Charges Project Board. The Board meets on a monthly basis and consists of officers from the service areas that provide search information.
- 2.10 Allied to this the huge task of transferring the paper based land charges registers into electronic format is now well underway, with 95% of the Scunthorpe records now having been inputted. The downturn in search volume has freed staff up to attend to this exercise, which would otherwise have required support to be brought in to progress.
- 2.11 Despite the introduction of regulations in 2009 to revise the local land charges charging regime, a series of challenges have been mounted by Search Companies arguing, in essence, that much of the information contained in a search should be provided free under the Environmental Information Regulations 2004. Initial rulings of the Information Commissioner have supported this stance and recognising the potentially huge budgetary implications this may have for local authorities, the LGA has instructed a specialist QC to advise on the way forward. The LGA are also in discussions with the Ministry of Justice and it is has recently been confirmed that the Ministry of Justice has asked its own lawyers to advise on the issues. Such

advice was due to be received by the end of January and as yet no indication has been given as to when it will be received. The LGA continue to press for this.

2.12 The current charges made are as follows:-

Standard Search Fee £75 (For postal and electronic searches)
Official Certificate only £52 (For postal and electronic searches)
Part II Enquiries Q.4 £6.00
 Q.5-19 & 21 £3.30 each
 Q 20 £8.90
 Q 22 £6.45
Con 29 optional enquiry (submitted on its own) £6 admin fee plus relevant enquiry fee
Additional Enquiries to be assessed on receipt
Extra parcels of land £11.50 each
Personal Search £22 each (statutory charge increased with effect from 1 January 2010)
Personal Search Con 29 fee £8.57

3. OPTIONS FOR CONSIDERATION - Local Land Charges

3.1 A number of options have been considered by the Land Charges Project Board on how next year's charges should be calculated. However, given the uncertainty posed by the legal challenges brought by the Search Companies and the continued downturn in the property market, it is felt that the most prudent approach would be to provide for a modest increase simply to enable the fees to keep pace with inflation and cater for the reassessment of internal costs apportioned to the Service.

3.2 On this basis the proposed fees for the year 1st April 2010 to 31 March 2011 would be as follows:

Standard Search Fee £76 (For postal and electronic searches)
Official Certificate only £52 (For postal and electronic searches)
Part II Enquiries Q.4 £6.60
 Q.5-19 & 21 £3.40 each
 Q 20 £9.00
 Q 22 £6.90
Con 29 optional enquiry (submitted on its own) £6 admin fee plus relevant enquiry fee
Additional Enquiries to be assessed on receipt
Extra parcels of land £11.50 each
Personal Search £22 each (statutory charge increased with effect from 1 January 2010)
Personal Search Con 29 fee £9.58

4. ANALYSIS OF OPTIONS - Local Land Charges

- 4.1 Given the uncertainty posed by the legal challenges brought by the Search Companies and allied to the prospect that local authorities, may, if the Search Companies arguments are accepted, have to repay some, if not all, of the fees that have been paid for search information, it is not felt appropriate at this juncture to make any radical changes to the current charges. Indeed, the modest increase proposed will enable the charges to keep pace with inflation but also ensure that the costs of the Service are covered and a breakeven position is maintained.
- 4.2 It is worth noting that in adopting this modest increase, the council's charges would still appear to be competitive when compared to the current fees of its near neighbours who charge the following for a full search - North East Lincolnshire Council £100, East Riding of Yorkshire Council £130 and West Lindsey District Council £96.00.

5. OPTIONS FOR CONSIDERATION - Legal Services Discretionary Fees

- 5.1 As part of the work undertaken through the council's membership of the Unitary Authority Benchmarking Group discretionary fees charged by the Legal Service have been kept under review.
- 5.2 The legal service undertakes work for external bodies such as the YHGFL consortium and associated groups for which it charges an hourly rate based on the level of officer undertaking the work. Similarly, the service level agreement governing legal advice to schools is based on an hourly rate as are costs recovered in successful court cases. The respective hourly rates are detailed in Table B of Appendix A
- 5.3 The service also levies a fixed fee charge for the work undertaken on the more routine property transactions. (Table A of Appendix A) and a percentage fee on property transactions generating a capital receipt or which attract grant funding (Table C of Appendix A).

6. OPTIONS FOR CONSIDERATION - Legal Services Discretionary Fees

- 6.1 The options are to retain the existing fees, increase the fees or introduce a different structure.

7. ANALYSIS OF OPTIONS - Legal Services Discretionary Fees

- 7.1 Retaining the current fees would not allow for inflation and not keep them in line with those charged by other authorities.
- 7.2 It is suggested that any increase in fees is based upon a simple £2.50 per hour increase charged by solicitors/fee earners for the work they do. This would allow for inflation and keep step with other authorities' charging structures.
- 7.3 Appendix A shows the current level of fixed fees for work undertaken by the Legal Service in Table A Column 2 and the current hourly rate for its officers in Table B Column 2. The proposed new fee structure is set out in Column 3 to both Tables.

7.4 The increase reflects a reasonable estimate for the cost of providing the service based on a tiered cost recovery approach and compares favourably with the costs associated with the private sector which start at around £150/hour locally for solicitors rising to an average of £175 - £225/hour regionally.

8. RESOURCE IMPLICATIONS)(FINANCIAL, STAFFING. IT)

8.1 The Local Land Charges budget situation will need to be monitored because of the number of variable factors involved but also in light of any changes to the charging regime emanating from the recent challenges brought by private Search Companies arising from which there is a real prospect that repayment of fees already recovered might be a consequence. With regard to Legal Services, the increase in fees should generate income for the budget.

8.2 Electronic improvements to the system will continue to be developed by the Project Team.

9. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

9.1 Further increase in the use of IT in local land charges work should result in a reduction in the amount of paper used.

9.2 There are no diversity implications involved in the recommendations made.

10. OUTCOMES OF CONSULTATION

10.1 The consultation referred to in paragraph 2.6 has been borne in mind in when settling this report.

10.2 Consultation with the Land Charges Project Board and Finance has been undertaken and this report reflects the views expressed.

10.3 Liaison between the council, the LGA, The Institute of Local Land Charges Officers and neighbouring authorities will continue to monitor and assess the implications of any challenges to the current local land charges regime brought by private Search Companies.

11. RECOMMENDATIONS

11.1 That the local land charge fee structure as set out in paragraph 3.2 be implemented with effect from 1 April 2010 and be kept under review.

11.2 That the legal fees be increased, and adopted, as proposed in Appendix A with effect from 1 April 2010.

SERVICE DIRECTOR LEGAL AND DEMOCRATIC

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31 March 2010

Background Papers - Nil

APPENDIX A

DISCRETIONARY LEGAL FEES

LIST OF FEES AND CHARGES

Table A

DETAILS	CURRENT	PROPOSED
Leases Licences	A minimum of £300 - ie 4 hours work - work thereafter charged at the hourly rate based on table B (below) (ii)	A minimum of £310 - ie 4 hours work - work thereafter charged at the hourly rate based on table B (below) (ii)
S38 Agreements S106 Agreements S278 Agreements	A minimum of £675 - ie 9 hours work - work thereafter charged at the hourly rate based on table B (below) (ii)	A minimum of £697.50 - ie 9 hours work - work thereafter charged at the hourly rate based on table B (below) (ii)
Deeds of Grant and Easements etc Sales of miscellaneous land at the request of Buyer Licences to Assign/Sublet	A minimum of £300 - ie 4 hours work - work thereafter charged at the hourly rate based on table B (below) (ii)	A minimum of £310 - ie 4 hours work - work thereafter charged at the hourly rate based on table B (below) (ii)
Consent by letter to Assignment/Mortgage - Leasehold properties Abstracts/Epitome of Reversionary Freehold title Miscellaneous retrospective consents/inspections Miscellaneous legal/administrative charges Notice fees on Assignments, Mortgages etc of industrial premises	£135 Not less than £145 Min 1 hour at relevant fee earner rate approved hourly rate Amount fixed by lease but otherwise not less than £75	£137.50 Not less than £147.50 Min 1 hour at relevant fee earner rate approved hourly rate Amount fixed by lease but otherwise not less than £77.50

Letter of Postponement	£75	£77.50
Registration fees:-		
HAA Notice of Mortgage/Charge	£35	£37.50
Supplying:		
Title No.	£25	£27.50
Epitome of Title	Not less than	Not less than
	£75	£77.50
Mortgage Redemptions	£75	£77.50
Photocopying	19p per sheet	20p per sheet
Supplying miscellaneous copy documents	Not less than	Not less than
	£75	£77.50

Table B

Hourly Charge

Officer		Current Rate	Proposed Rate
(i)	Legal Services Manager - Heads	£95	£97.50
(ii)	Solicitors*	£75	£77.50
(iii)	Legal Assistants/Trainee Solicitors	£57.50	£60
(iv)	Admin	£45	£47.50

Table C

Fees for Capital Receipt/Grant Funded transactions

Value of receipt/amount of grant funding	
Up to £30,000	Minimum fee of £700
Between £30,000 and £60,000	2%
Between £60,000 and £150,000	2% of first £60,000 1.5% of the balance up to £150,000
Over £150,000	2% of first £60,000 1.5% of the next £90,000 1% of anything over £150,000

*Schools' SLA work – £230 for 3 hours thereafter £77.00 per hour via Schools' Forum Feb 2010.