

REPORT TO: Cabinet Member – Corporate Services
Cabinet

DATE: 14 October 2009
25 October 2009

SUBJECT: Local Land Charges

**WARDS
AFFECTED:** All

REPORT OF: Caroline Elwood, Legal Director

**CONTACT
OFFICER:** Andrea Grant Ext 2030

**EXEMPT/
CONFIDENTIAL:** NO

PURPOSE/SUMMARY:

To provide an update on the Information Commissioner's recently issued guidance on the charging for access to environmental information and to update Members on the forthcoming Local Land Charges (Amendment) Rules 2009.

REASON WHY DECISION REQUIRED:

To update Members on the current position regarding the provision of environmental information and the forthcoming Local Land Charges (Amendment) Rules 2009.

RECOMMENDATION(S):

1. That the Cabinet Member note the report and request updates be provided as further legal advice is received on the potential impact of the Environmental Information Regulations.
2. That the Cabinet Member recommends to Cabinet the proposed increase in LLC1 search fees to £22 from 1st January 2010.
3. That Cabinet approves the proposed increase in LLC1 search fees from 1st January 2010.

KEY DECISION: No

FORWARD PLAN: Not appropriate

IMPLEMENTATION DATE: Following the expiry of the “call-in” period for the Minutes of the meeting.

ALTERNATIVE OPTIONS:

None

IMPLICATIONS:

Budget/Policy Framework: None arising from this report.

Financial: There may be serious financial consequences as a result of ICO Guidance on charging being adopted, however at this stage the effects on fee income cannot be quantified.

Increasing the fees for personal searches and LLC1 could produce an extra £13,000 income during 2009/10 and £52,000 in a full year. These increases will help reduce the currently projected shortfall in the Local Land charges budgets.

<u>CAPITAL EXPENDITURE</u>	2009/ 2010 £	2010/ 2011 £	2011/ 2012 £	2012/ 2013 £
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
<u>REVENUE IMPLICATIONS</u>				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? Y/N	When?			
How will the service be funded post expiry?				

Legal: The Legal Director supports this proposal.

Risk Assessment: There is a risk of reduced income being received by the Land Charges section and other Council departments that provide building control and traffic scheme information on a charged basis.

Asset Management: None arising from this report.

CONSULTATION UNDERTAKEN/VIEWS

FD 126 - The Finance and Information Services Director has been consulted and his comments have been incorporated into this report.

Regeneration and Environmental Services

CORPORATE OBJECTIVE MONITORING:

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community			
2	Creating Safe Communities			
3	Jobs and Prosperity			
4	Improving Health and Well-Being			
5	Environmental Sustainability			
6	Creating Inclusive Communities			
7	Improving the Quality of Council Services and Strengthening local Democracy			√
8	Children and Young People			

LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT

Guidance from the Information Commissioner's Office and circulars from the LGA

1.0 BACKGROUND:

- 3.1 Members will be aware that a range of information is currently provided to private search companies, conveyancers and solicitors, for inclusion within Home Information Packs, by the Land Charges team. In addition, a number of private search companies contact departments individually for access to data, some of which is subject to the charges levied by those individual departments. The Land Charges Team currently only provides the whole data set (rather than individual parts) for a fee of £80.
- 1.2 On 17th June 2009, the Information Commissioner's Office (ICO) published guidance relating to the treatment of property search data. The guidance outlines the ICO's view that the majority of property search data is environmental information and that local authorities are required to allow inspection of this data at no charge (in accordance with the Environmental Information Regulations (EIR)).
- 1.3 The LGA have already outlined strong concerns about this position to the ICO, Department for Communities and Local Government and Department for the Environment, Food and Rural Affairs (DEFRA), which is responsible for the EIR. The cost to local authorities of implementing this guidance could amount to several hundred thousand pounds a year for large unitary authorities, and they believe it is unacceptable that local authorities and taxpayers are expected to bear this cost so that private businesses can exploit information for commercial gain. The LGA do not believe that this was the intention of the environmental information regulations.
- 1.4 The latest information from the LGA (received on 5th August 2009) is that they have been working with their solicitors to prepare instructions to counsel to obtain an Opinion on the legal issues concerning the 2008 Charging Regulations and the Environmental Information Regulations, including an analysis of the potential for a legal challenge to the ICO guidance and the decision notices. They anticipate being able to report the outcome of Counsel's Opinion to authorities in early to mid September. At the same time, the LGA are pushing for a change to the existing legislative framework if they find that that is the appropriate route to protect taxpayers' interests.

2.0 Sefton's position

- 2.1 The Council is currently awaiting further advice from the LGA and the Local Land Charges Institute on the best way to proceed. However, Members should be aware that the Land Charges section is currently struggling to meet its income targets under the current charging regime. Any changes to the charging regime, although difficult to quantify at this stage, will have a major detrimental effect on the section's ability to meet those income targets.
- 2.2 The 2009/10 Land Search Budget for search fee income, is £300k, and last year (2008/9), this underachieved by £126k. To the end of July this year, achievement is behind expectation by £19k. The income generated is made

through a variety of charges dependent upon the type of search required (usually a full search), which draws on information from several departments, including Environmental services, Technical Services, and Planning, and hence this income is in recovery of both the Land Search Section's costs and other Departmental time spent in supplying information as part of a full land search. There are extremely low costs of running the Land Charges section (the staffing budget for the section is £81,035 against an income target of £300,000) and the service has always achieved more income than it costs. In addition, staff within the Land Charges Section are extremely flexible in their working duties. For example, members of the section have assisted in times of sickness and with peak workloads in the Coroner's Office and, once their office move from Crown Buildings to Southport Town Hall, will also assist in the General Office where there will shortly be staff vacancies.

- 2.3 The other departments mentioned above, who hold environmental data on their registers, may also charge separately for this information if it has been requested directly by individuals or private search companies and not made via the Land Search section as part of a full land search, and their income from this may also similarly be affected if the ICO guidance is accepted. A corporate group has been established to look at this issue in conjunction with the Council's Freedom of Information Officer.

3.0 Local Land Charges (Amendment) Rules 2009

- 3.1 The fee for a personal search of the local land charges register in England is set by the Lord Chancellor, with the consent of HM Treasury, under the Local Land Charges Act 1975.
- 3.2 The consultation paper Local Authority Property Search Services published on 18 January 2008 sought views on how and by whom the fee for a personal search of the local land charges register should be set and at what level it should be set.
- 3.3 In relation to the provisional proposal that the fee for a personal search of the local land charges register should be set by local authorities in England, LAs strongly favoured local fee setting on a cost recovery basis, while the private sector search companies supported a centrally set fee. The private sector did not disagree with cost recovery as a basis for setting the fee, but took a narrower view of what costs should be included. In view of the lack of consensus, the Ministry of Justice has no current plans to take forward the devolution of the power to set this fee.
- 3.4 In the light of the responses received, the Government has concluded that the fee for a personal search of the local land charges register should be increased from £11, the level at which it was set in 2003, to £22. This increase balances the interests of LAs, the private sector and consumers. The new fee will come into force on 1 January 2010.
- 3.5 The effect of this for Sefton should be to double the income received for Land Searches. In the financial year 2008/09 4306 personal searches were

completed generating £47366 in income - obviously if the same volume of searches are carried out the income will double in a full year. Members will be aware of the difficulties the Section has experienced in attaining its income targets and this measure should address this matter.

- 3.6 The private sector could choose to submit form LLC1 as an alternative to a personal search -fee set for LLC1 is £10, following the authorities increase from £6 to £10 (in April 2007) these searches dramatically decreased in volumes. In 2008/09 there were only 384 LLC1 fees received. As the fee for the LLC1 is set locally, the Council has the option to review this fee and it is suggested that the fee be set at the same level as the personal search fee (£22). Assuming a similar take-up of these searches as 2008/09 would generate approximately an extra £4,600 income for the Council in a full year. The fee income would place Sefton favourably within the majority of Merseyside authorities as shown below:

Sefton	£22
Wirral	£24.50
Liverpool	£25
Knowsley	£20
St Helens	£6

- 3.7 The increase in personal search and LLC1 fees estimated upon 2008/09 requests could bring in an extra £13,000 income during 2009/10 based upon a 1st January 2010 implementation date. This could increase to approximately £52,000 in a full year. However, as previously reported land search fee income to the Council has significantly declined as a consequence of the recession, therefore any additional income raised by these fee increases will need to be utilised to offset the current forecasted budget shortfall.

4.0 Recommendations:

1. That the Cabinet Member note the report and request updates be provided as further legal advice is received on the potential impact of the Environmental Information Regulations.
2. That the Cabinet Member recommends to Cabinet the proposed increase in LLC1 search fees to £22 from 1st January 2010.
3. That Cabinet approves the proposed increase in LLC1 search fees from 1st January 2010.