

	<p style="text-align: center;">Executive 26 May 2009</p> <p style="text-align: center;">Report from the Director of Environment and Culture</p>
<p style="text-align: right;">Wards Affected: None</p>	
<p style="text-align: center;">Property Searches Proposed Fee (local land charges)</p>	

Forward Plan Ref: E&C-08-09-047

1.0 Summary

- 1.1 This report seeks approval to set a charge for access to property records provided by the Local Land Charges Office and to re-set the current property search fees in accordance with the new charges set out in Property Searches Regulations 2008.
- 1.2 The report sets out the key principles behind the Charging Regulations to establish a level playing field between local authorities and personal search agents and to bring clarity and transparency to the charging process.
- 1.3 It also sets out the requirement from the financial year 2009-10 for Local Authorities to publish by 30th June the following year a summary of the total cost of providing property data, the number of requests and total income from the new charges. The annual accounts must be certified by the Council's Section 151 Officer and demonstrate that the data is provided on a cost recovery basis.

2.0 Recommendations

It is recommended that members:

- 2.1 Note the implications of the new regulations made on 16th December 2008 which came into force on 23rd December 2008: - *"The Local Authorities (England) (Charges for Property Searches) Regulations 2008"*, known as the

Regulations, which enables the Council to charge for providing access to property records from 6 April 2009.

- 2.2 Approve the fees for access to property records as set out in Appendix A, which in accordance with the new Regulations have been calculated on a cost recovery basis as shown in Appendix B
- 2.3 Approve the existing fee structure for charges for property searches under the new regulations attached as Appendix C for 2009-10
- 2.4 Approve that since the new Regulations were in force from 6 April the new access to property records fee and revised property search fees will be applied immediately on approval of the Executive.

3.0 Detail

3.1 Background

The Local Land Charges Service is provided within a statutory framework and is part of the conveyancing procedure which discloses to prospective property purchaser of any outstanding financial claims, Council decisions (e.g. Planning and Building Regulations applications) and other information such as highways, and environmental issues which may affect a particular property or parcel of land. Prior to December 2008 there are two methods of undertaking a property search as set out below:

Full search – Con29R

The full search requires answers to all the questions set out in the CON29R statutory form. This task is undertaken by the Council Land Charges Team who timely and accurately responds fully all the answers within three working days. The charge for this service is £200.

Personal Searches

Personal searches Agents undertake property searches by purchasing a request at £11 from the Council to search the Local Land Charge Register for any outstanding financial claims and compile the statutory form using data from the Council's website or the One Stop Shop. The remaining answers are completed by contacting relevant Council's services who may levy a charge i.e. Transportation or left unanswered to be covered by insurance.

- 3.2 The 2008 Regulations revoke the current Regulations. Their aim is to provide a level playing field between local authorities and Personal Search Agents (PSA) and to bring clarity and transparency to the charging process. From 6th April this year PSAs will no longer be able to rely on insurance cover for missing data from a property search. This had been common practice since not all property search information required for the Home Information Pack (HIP) was available from a personal search of the Local Land Charges Register (LLC1). The new Regulations now require all unrefined property data to be made available on a cost recovery basis, which will enable PSAs and Local Authorities alike to produce a HIP-compliant property search. The Council can

charge a total fee of £110 for providing a complete set of property data to PSAs.

- 3.3 The Council has gradually lost its market share of property searches to PSAs, who have been able to undercut the Council on price by providing a basic Property Search based on data obtained through a Personal Search, for which the Council could only levy the statutory fee of £11.00. PSAs would obtain any additional information from the Council's website, by visiting the One Stop Shop at Brent House, or by contacting the relevant Service Unit direct, eg Transportation, or from other external sources. PSAs would use insurance to cover any missing data.
- 3.4 The Council's current share of the market is estimated to be around 39%, which is based on the last six month's data. Coupled with a rapidly falling number of search requests resulting from falling house prices and the introduction of the HIP has had a major impact on the recovery of the costs involved in providing this information.
- 3.5 The new Regulations allow local authorities to set a fee for access to property records on a cost recovery basis. The fee is calculated on the total annual cost of providing access to that data, divided by the total number of requests, both internal (i.e. for Official Land Charges Searches) and external (i.e. for PSAs). The fees are to be reviewed annually and should be suitably adjusted so that cost recovery is achieved over a rolling three-year period. The cost of recovery is the cost incurred by the Council in the provision of the data to all parties.
- 3.6 The Regulations define property search data in one of three ways: pre-unrefined, unrefined and refined.
- 3.7 Pre-unrefined describes data that cannot be made available to the public since access would be in contravention of the Data Protection Act (DPA) and would not meet the Freedom of Information (FOI) test. An example of this might be a planning enforcement complaint that has become a full enforcement notice, where the case file (i.e. the pre-unrefined data) would contain both the complainant's details (DPA protected) and the enforcement notice (publicly accessible). In this case only the local authority may review the case file in order to view or extract the enforcement notice. Pre-unrefined can only be converted into unrefined data by a local authority.
- 3.8 Unrefined data describes data that would pass a DPA/ FOI test. It is the first point at which data is accessible to third parties and where any further refinement can be undertaken by a third party or the local authority. The Regulations allow for a local authority to charge for providing this unrefined data, unless the information is considered to be free statutory information as defined in the Regulations.
- 3.9 Refined data is where value has been added to the unrefined data. The Regulations state that '*a local authority may not be able to make the unrefined information available if it operates an electronic system holding pre-unrefined data*'. In such circumstances the local authority would make the refined data available on a cost recovery basis. Since the Council holds most of its property

search data in different modules of the computerised Acolaid system (except for Highways where data is held in different systems) it may therefore charge for providing refined information on all parts of the property search (excluding the unrefined Highways data).

- 3.10 Since the Regulations allow for access to property search information contributing towards a full property search (Con29R) and the recovery of the costs the Council proposes a charging structure that will allow customers to access property search information through individual question as set out in Appendix B. Items 1.1, 1.2, 2(a), 3.4 (a, e, f), 3.9 (a-f), 3.10(a), 3.12 (a) 3.12 (b ii) and 3.13 are statutory information and are available free on the Council's internet and at the OSS.
- 3.11 During 2009, officers will be undertaking a review of the Local Land Charges function and as part of that review it is intended to review all of the search fees and to make them more competitive whilst maintaining cost recovery. Proposed fees for 2010-11 will be reported to the Executive by February 2010. However as the new regulations revoke previous legislation it is necessary for members to re-approve the existing property search fees under the new Regulations, a schedule of the current fee structure is therefore attached at Appendix C for members to reconsider and re-approve.

4.0 Financial Implications

- 4.1 The 2008/09 income for all Local Land Charges totalled £367K.
- 4.2 The 2009/10 annual costs for maintenance and access to the refined data are budgeted at £446K , as detailed in Appendix A
- 4.3 Based on current trends the number of Personal Search requests for 2009/10 is estimated at 2,700 at a charge of £11.00. Recent monitoring suggests that the questions most requested relate to Planning, Building Control, Environmental Health and closely followed by Highways. However, for Highways question 3.6 a-l it is estimated that only 120 requests will be made. Data to compile the answers to question 3.6 a-l is in various systems and require office's time to decipher hence reflects the additional staff cost. The total income from Personal Searches for 2009-10 is estimated at £106K, whilst the income from Full Searches is £340K, based on an assumed 1700 searches at £200 (including the LLC1 at £6). The estimated total income from Personal and Full Searches for 2009-10 is £446K as shown in the table below:

	Estimated No of Searches	Proposes Charge	Total Cost
Charge for Personal Search	2700	£11.00	£29,700
Additional Planning questions	2700	£10.00	£27,000
Additional Building Control questions	2700	£6.00	£16,200
Additional Environmental Health questions	2700	£5.00	£13,500
Additional Housing questions	2700	£4.00	£10,800
Additional Highways questions 3.6 a-l	120	£75.00	£9,000
All other additional Highways questions	2700	£10.00	£27,000

Estimated income from Personal Charges			£106,200
Estimated income from Full searches	1700	£200.00	£340,000
Estimated income			£446,200

4.4 There are costs associated with modifying the software to provide data in a refined format as reflected in the development of the budget as set out in Appendix A.

4.5 Since the Council does not currently charge for personal searches an initial deficit in cost recovery may occur in the first year. The fees will therefore be reviewed at the end of 2009/10 to ensure cost recovery is achieved over the three-year rolling period.

5.0 Legal Implications

5.1 The current legal position relating to property searches has different legal powers relating to each question forming the property enquiry (the refined data). In some cases there is a statutory right of public inspection (and for some this is specified to be a right of free inspection) whilst for others access to the information and the charging of fees is at the discretion of the local authority. There has also been some inconsistency as to how Councils approach access to the unrefined data. The Local Authorities (England) (Charges for Property Searches) Regulations 2008 is aimed at addressing these issues.

5.2 The Regulations establish a new approach to the calculation of fees for the provision of unrefined property data and sets out the principles for charging based on historic cost recovery, which require that over a period of three consecutive years the Council should ensure that the total income from these charges does not exceed the total costs.

5.3 With regard to refined data i.e. the cost of responding to enquiries, a charge may be made at the local authority's discretion, having '*regard to the costs*'.

5.4 In order to provide transparency for each financial year from 1st April 2009 the Council must publish a statement by June of the following year setting out the estimated number of requests for unrefined data for that financial year (and the basis for it) together with the proposed charges in relation to both unrefined and refined data and the total income achieved in the previous year.

6.0 Diversity Implications

6.1 The proposal has been screened for adverse impacts and officers believe that since the proposed fee is calculated on a cost recovery basis in accordance with legislation and the fee applied uniformly to all property data requests there are no diversity implications.

Background Papers

CLG - The Local Authorities (England) (Charges for Property Searches)
Regulations 2008

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APPENDIX A

Costs to carryout full Land Charges Searches and to update, maintain and provide access to the Local Land Charges Register Information

Service Unit/ Team	Item	Amount	Detail
Local Land Charges	Staff	£ 132,000.00	Salary, inc on-costs
	Accommodation	£ 15,000.00	Indirect
	IT systems and support	£ 35,000.00	Capital, development & maintenance
	PC's inc. network charges	£ 5,000.00	Support services
	Supplies & Services	£ 6,000.00	Postage, stationery, professional bodies
Building Control and Consultancy Services	Staff - 0.5 post	£ 12,500.00	Salary + indirect and services
Development Control	Staff - 1 post	£ 25,000.00	Salary + indirect and services
Environmental Health	Staff - 0.5 post	£ 12,500.00	Salary + indirect and services
Housing and Community Care	Staff - 0.5 post	£ 12,500.00	Salary + indirect and services
Transportation	Staff - 1 post	£ 30,000.00	Salary + indirect and services
E&C Directorate	Management and Director support. Finance and Administrative officer time	£ 110,000.00	Salary + accommodation and services. Research and marketing
LB Brent Central Services	Legal, Finance, OSS, Human Resources and other overheads	£ 50,000.00	Corporate support
		£ 445,500.00	

Appendix B

Fees for individual questions at cost recovery

Questions from Con29R: Please note that answers to questions prefix with an * are available free from the Council website.	Cost per Question
Planning	
* 1.1. Planning Decisions and Pending Applications - Which of the following relating to the property have been granted, issued or refused or (where applicable) are the subject of pending applications - (a) a planning permission; (b) a listed building consent; (c) a conservation area consent; (d) a certificate of lawfulness of existing use or development; (e) a certificate of lawfulness of proposed use or development;	
*1.2. Planning Designations and Proposals - What designations of land use for the property or the area, and what specific proposals for the property, are contained in any existing or proposed development plan?	
3.1. Land required for Public Purposes - Is the property included in land required for public purposes?	£1.00
* 3.9. Notices, Orders, Directions and Proceedings under Planning Acts - Do any of the following subsist in relation to the property, or has a local authority decided to issue, serve, make or commence any of the following:- (a) an enforcement notice; (b) a stop notice; (c) a listed building enforcement notice; (d) a breach of condition notice; (e) a planning contravention notice; (f) another notice relating to breach of planning control;	
3.9(g) a listed building repairs notice;	£1.00
3.9(h) in the case of a listed building deliberately allowed to fall into disrepair, a compulsory purchase order with a direction for minimum compensation;	£1.00
3.9(i) a building preservation notice;	£1.00
3.9(j) a direction restricting permitted development;	£1.00
3.9(k) an order revoking or modifying planning permission;	£1.00
3.9(l) an order requiring discontinuance of use or alteration or removal of building or works;	£1.00
3.9(m) a tree preservation order;	£1.00
3.9(n) proceedings to enforce a planning agreement or planning contribution;	£1.00
*3.10. Conservation Area - Do the following apply in relation to the property - 3.10(a) the making of the area a Conservation Area before 31 August 1974;	
3.10(b) an unimplemented resolution to designate the area a Conservation Area?	£1.00
Total Planning	£10.00

Building Control	
1.1. Building Decisions and Pending Applications - Which of the following relating to the property have been granted, issued or refused or (where applicable) are the subject of pending applications - (f) building regulations approval; (g) a building regulation completion certificate; (h) any building regulations certificate or notice issued in respect of work carried out under a competent person self-certification scheme?	£4.00
3.7. Outstanding Notices - Do any statutory notices which relate to the following matters subsist in relation to the property other than those revealed in a response to any other enquiry in this Schedule 3.7(a) Building works;	£1.00
3.8. Contravention of Building Regulations - Has a local authority authorised in relation to the property any proceedings for the contravention of any provision contained in Building Regulations?	£1.00
Total Building Control	£ 6.00

Housing	
3.7. Outstanding Notices - Do any statutory notices which relate to the following matters subsist in relation to the property other than those revealed in a response to any other enquiry in this Schedule: 3.7(d) Housing	£2.00
3.11 Compulsory Purchase - Has any enforceable order or decision been made to compulsorily purchase or acquire the property?	£2.00
Total Housing	£4.00

Environmental Health	
3.3. Drainage Agreements and Consents - Do either of the following exist in relation to the property- 3.3(a) An agreement to drain buildings in combination into an existing sewer by means of a private sewer;	Contact Thames Water
3.3(b) An agreement or consent for (i) a building, or (ii) extension to a building on the property, to be built over, or in the vicinity of a drain, sewer or disposal main?	Contact Thames Water
3.7. Outstanding Notices - Do any statutory notices which relate to the following matters subsist in relation to the property other than those revealed in a response to any other enquiry in this Schedule:- (b) environment;(c) health and safety;(f) public health?	£3.00
3.12. Contaminated Land - Do any of the following apply (including any relating to land adjacent to or adjoining the property which has been identified as contaminated land because it is in such a condition that harm or pollution of controlled waters might be caused on the property):- *3.12(a) a contaminated land notice;	
3.12(b) in relation to a register maintained under section 78R of the Environmental Protection Act 1990:- 3.12(b)(i) a decision to make an entry;	£1.00

*3.12(b)(ii) an entry;	
3.12(c) consultation with the owner or occupier of the property conducted under section 78G(3) of the Environmental Protection Act 1990 before the service of a remediation notice?	£1.00
*3.13 Radon Gas - Do records indicate that the property is in a "Radon Affected Area" as identified by the Health Protection Agency?	
Total Environmental Health	£5.00

Highways	
*2 ROADS - Which of the roads, footways and footpaths named in the application for this search are: 2(a) highways maintainable at public expense;	
2(b) subject to adoption and, supported by a bond or bond waiver;	£1.00
2(c) to be made up by a local authority who will reclaim the cost from the frontagers;	£1.00
2(d) to be adopted by a local authority without reclaiming the cost from the frontagers?	£1.00
3.2. Land to be acquired for Road Works - Is the property included in land to be acquired for road works?	£1.00
*3.4. Nearby Road Schemes - Is the property (or will it be) within 200 metres of any of the following -: 3.4(a) the centre line of a new trunk road or special road specified in any order, draft order or scheme;	
3.4(b) the centre line of a proposed alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway;	£1.00
3.4(c) the outer limits of construction works for a proposed alteration or improvement to an existing road, involving (i) construction of a roundabout (other than a mini roundabout); or (ii) widening by construction of one or more additional traffic lanes;	£1.00
3.4(d) the outer limits of (i) construction of a new road to be built by a local authority; (ii) an approved alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway; or (iii) construction of a roundabout (other than a mini roundabout) or widening by construction of one or more additional traffic lanes;	£1.00
*3.4(e) the centre line of the proposed route of a new road under proposals published for public consultation;	
*3.4(f) the outer limits of (i) construction of a proposed alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway; (ii) construction of a roundabout (other than a mini roundabout); or (iii) widening by construction of one or more additional traffic lanes, under proposals published for public consultation?	
3.5. Nearby Railway Schemes - Is the property (or will it be) within 200 metres of the centre line of a proposed railway, tramway, light railway or monorail?	£1.00

3.6. Traffic Schemes - Has a local authority approved but not yet implemented any of the following for the roads, footways and footpaths which abut the boundaries of the property- (a) permanent stopping up or diversion; (b) waiting or loading restrictions; (c) one way driving; (d) prohibition of driving; (e) pedestrianisation; (f) vehicle width or weight restriction; (g) traffic calming works including road humps; (h) residents parking controls; (i) minor road widening or improvement; (j) pedestrian crossings; (k) cycle tracks; (l) bridge building?	£75.00
3.7. Outstanding Notices - Do any statutory notices which relate to the following matters subsist in relation to the property other than those revealed in a response to any other enquiry in this Schedule: 3.7(e) Highways;	£1.00
3.11 Compulsory Purchase - Has any enforceable order or decision been made to compulsorily purchase or acquire the property?	£1.00
Total Highways	£85.00

Appendix C

Existing charges

Personal Search

The fee for a Personal Search of the Local Land Charges Register: £11.00

Register Print Outs: £1.50 per page

Additional parcels of land (each): £1.00

Brent Local Land Charges Service

Official Search Form LLC1: £ 6.00

Part I Con29 Enquiries: £194.00

TOTAL FEE £200.00

Additional parcels of land LLC1 (each): £1.00

Part II Con29 Enquiries

(I) For each Optional Enquiry: £10.00

Requested separately: £20.00

(II) For each Additional Enquiry: £20.00

Which must relate to property being searched. Wide enquiries cannot be answered by the Council.

For each additional parcel of land: £20.00

Fee for copy search (payable in advance): £30.00