

**LOCAL LAND CHARGE FEES**

**EXECUTIVE MEMBER:** Councillor Norman Williams, Portfolio Holder for Effective Leadership.

**LEAD OFFICER:** Martin Jepson, Head of Legal and Democratic Services.

**REPORT AUTHOR:** Clinton Boyce, Legal Services Manager.

|                        |  |
|------------------------|--|
| <b>SUMMARY:</b>        | To advise Members of (a) action taken under the Executive's urgent business procedure in respect of the setting of local land charge fees for the period 20 <sup>th</sup> April 2009 until the decision of this Executive is effective; and (b) to seek approval to the setting of the fees for the remainder of the financial year 2009/10 reserving discretion to the Lead Officer to report back with adjusted fees if appropriate. |
| <b>RECOMMENDATION:</b> | (a) that the urgent action, at Appendix A to the report, is noted; and<br>(b) that the fees as set out in the attachment to the urgent action as amended by paragraph 3.1 of the report be set for the remainder of the financial year 2009/10 provided that if the information referred to in paragraph 2.1, when received, requires fees to be adjusted that a further report be made at that time.                                  |

**1. BACKGROUND AND ACTION TAKEN UNDER URGENT BUSINESS PROCEDURE**

- 1.1 Members are referred to the action taken under the Executive's urgent business procedure attached as Appendix A. That urgent action form sets out the background to this matter. The urgent action expires on the date that this meeting makes an effective decision.

**2. CURRENT POSITION**

- 2.1 Whilst the new fees have largely been accepted by users of the service it is not possible to resolve the outstanding issues at this stage. These are:
- (a) Personal search companies are challenging the right of local authorities to charge for environmental information which should be provided free of charge under the Environmental Information Regulations 2004. In respect of this type of information replies to contaminated land and radon gas enquiries are already provided free of charge. The question is whether charges can be made in respect of the other environmental information asked for, namely, outstanding statutory notices for building works, environment, health and safety and public health and possibly contravention of building regulations. The question is currently with the Information

Commissioners and guidance or a decision from them will be issued nationally over the next two months. In this Council's case the fees are being charged but it may be necessary to refund parts of the charges made depending on the decision of the Commissioners. As at the 7<sup>th</sup> May 2009 £484 had been received in respect of personal search fees and only part of this would be repayable. Repayments are therefore unlikely to be substantial; and

- (b) Draft internal recharges have now been issued but could not be considered in detail prior to this report being issued. A verbal update will be provided to members at the meeting. On the face of it the new budget shows a reduction in costs. Those costs however of running the function still exceed expected income. It is likely that at this stage that the recommendation will remain the same. Due to the Regulations referred to in the urgent action the setting of fees is now a detailed process with certain matters having to be published at the end of each year.

### **3. AMENDMENTS TO FEES**

3.1 The following amendments to the fees are necessary:

- (a) In respect of CON29O replace '(Question 5)' with '(Questions 4 and 5)' – question 4 was overlooked in setting the fees on the 20<sup>th</sup> April and this corrects the position;
- (b) Add the following additional fees:

|  |                            |
|--|----------------------------|
| Local land charges register – additional parcel of land            | £5.00 each parcel          |
| Local land charges register and CON29R – additional parcel of land | £15.00 each parcel         |
| Retrieval and photocopy of previous search                         | £10.00 each                |
| Copies of other documents referred to in any reply                 | £10.00 each                |
| Registration of a light obstruction notice                         | £30.00                     |
| Filing a Lands Tribunal light obstruction certificate              | £15.00                     |
| Variation or cancellation of a light obstruction notice            | £15.00                     |
| Inspection of documents relating to light obstruction notices      | £10.00 per parcel of land. |

(A light obstruction notice is a mechanism where an owner of land may prevent the acquisition of a right to light over his land by registration of a notice in the local land charges register).

- 3.2 Further revisions of the fees may be required when the information referred to in paragraph 2.1 is received or considered further. If this is necessary a further report will be made during the course of the financial year.

### **4. RECOMMENDATIONS**

- 4.1 As set out in the 'Summary and Recommendation' box at the beginning of this report.

### **5. FINANCIAL AND HUMAN RESOURCES IMPLICATIONS (INCLUDING SOURCES OF FINANCE)**

- 5.1 The Regulations referred to in the urgent action require local authorities to have regard to costs incurred when setting fees. In other words, a local authority should not profit from the function. Budgeted income for 2009/10 is expected to be £90,431.

Income for the first five weeks of the new financial year is £7,159. Projected over a 12 month period this amounts to £74,453 which is £15,978 short of the projected income. Total income (provisional outturn) during 2008/09 was £66,207. There is therefore an increase but not sufficient to achieve expected income. Under the new Regulations however the expected income is not the relevant figure. It is the cost of providing the service which is the material consideration and this can only be finalised when the complete budget is available.

## **6. PROJECT AND RISK MANAGEMENT**

6.1 Not applicable.

## **7. IMPACT ON CORPORATE PLAN**

7.1 Not applicable – statutory function.

### **List of Appendices**

Appendix A – Urgent action form.

### **List of Background Documents**

As appendices; and  
Budget information available to date.

### **List of Consultees**

Head of Legal & Democratic Services (ref MJ)  
Head of Finance and Management Information Systems (ref JC)  
Portfolio Holder

### **CHECKLIST FOR DEALING WITH KEY ISSUES**

Please confirm against the issue if the key issues below have been addressed. This can be by either a short narrative or quoting the paragraph number in the report in which it has been covered.

|   |  |
|---|--|
| Impact on Crime and Disorder            | N/a  |
| Impact on Sustainability                | N/a  |
| Impact on Rural Proofing                | N/a  |
| Health and Safety Implications          | N/a  |
| Project and Risk Management             | N/a  |
| Impact on Equality and Diversity Issues | N/a  |
| Children and Young Persons Implications | N/a  |
| Human Rights Act Implications           | N/a  |
| Monitoring Officer comments             | Nothing to add to the report   |
| Financial Monitoring Officer comments   | Recharges in respect of 2008/09 have been actioned as part of closure of accounts activities. These could be used as the basis for the 2009/10 charge – but the applicability of certain |

|  |   |
|--|---|
|  | aspects of the recharges to Land Charges needs to be carefully considered. Finance will work with Legal to achieve this before end May. |
|--|---|

Please say if this report will require the making of a Key Decision    NO



| Ref Number   | Date Issued  | Officer/Dept | Rec'd by Secretariat | Reported to the Executive |
|--|--------------|--------------|----------------------|---------------------------|
| 02/09  | 2 April 2009 | C Boyce      | 20/4/09              | 26/5/09                   |
| Prior to processing this form it must be referenced by the Secretariat |              |              |                      |                           |

## REQUEST FOR AGREEMENT TO URGENT ACTION UNDER EXECUTIVE PROCEDURE RULES

### LAND CHARGE FEES

#### STAGE A

|  |   |
|--|---|
| Portfolio:<br><br>Effective Leadership - Legal   | Originating Officer:<br><br>Clinton Boyce, Legal Services Manager |
| Date of next Executive meeting:<br><br>21 <sup>st</sup> April 2009   |   |
| <p><u>Action proposed:</u></p> <p>That the fees for local land charge searches and for requesting property information as set out in the Appendix to this urgent action are agreed for the period from the 20<sup>th</sup> April until the decision of the Executive meeting on the 26<sup>th</sup> May 2009 becomes effective.</p> <p>On the 23<sup>rd</sup> December 2008 the Local Authorities (England)(Charges for Property Searches) Regulations 2008 came into force which introduced a new charging regime for dealing with access to and replying to other enquiries about a property. From the 6<sup>th</sup> April 2009 insurance for personal search companies which search property records and request information on properties was removed. This combination has resulted in changes to the way that personal searches are undertaken and for the land charges budget and other fees to be reviewed.</p> <p>The Regulations restrict what charges can be made for allowing access to records and creates three year budgetary review periods. In practice access can only be permitted where the records are in public register format or otherwise accessible without sensitive or personal information being revealed. Planning information falls into the easily accessible group whilst building control, environmental, and housing information does not. In respect of granting access fees cannot be charged for inspecting public register which may be inspected free of charge.</p> <p>As planning information comprises largely of information kept on free public registers and as the information is easily accessible it is not proposed to introduce any charges for inspecting that information.</p> <p>With regard to building control, health and housing information this information is not easily accessible and is mainly kept on files with other information. In this respect for enquiries about a property officers will need to look at files or databases and prepare a reply. In this respect a charge can be made and by Regulation 8 the charge 'may be made at the local authority's discretion but must have regard to the costs to the local authority of answering enquiries about a property'.</p> <p>From the 1<sup>st</sup> April 2010 the Council must publish details of income and expenditure relating to property searches and the information must be transparent.</p> <p>Fees have been considered and it is proposed that in the first instance the fees set out in the Appendix to this request are charged. Certain issues prevent the setting of fees permanently. These are (a) recharges for the current financial year are</p> |   |

not known and estimates are based on those from 2007/08; (b) the Information Commissioners are considering a request from personal search companies as to whether environmental information should be provided free of charge; and (c) a transitional period which will allow procedures to be refined and for the outcome of an existing local consultation with personal search companies to be known would be helpful. Equally it would be inappropriate for the Council to go without receiving an income during this period.

The changes to fees are the introduction of a new charge for obtaining some building control, health and housing information through a personal search. The fees are respectively £11.00, £8.00 and £2.00 respectively. A reduction is made to the full search fee from £111.00 to £95.00. The stand alone LLC1 fee which is not a personal search increases from £6.00 to £17.00. The standard statutory personal search fee of £11.00 remains the same. The effect of these changes on budget and expected income is not known due to reasons (a) and (b) mentioned above; (c) a hopeful increase in the number of searches being received generally; (d) uncertainty how local solicitors will react to all the changes – a reduction in the number of full searches will reduce income whilst a change from using personal search companies to full searches will increase income; and (e) uncertainty whether personal searchers will request all three areas of information – building control, health and housing. It is therefore intended that a full report be made to the Executive on the 26<sup>th</sup> May when these matters become clearer.

**Financial/Resource Implications:**

Difficult to predict at this stage for the reasons set out above. It is likely that there will be no significant difference at this stage to the expected budgeted income.

**Reason(s) for urgency:**

If interim fees are not sent the Council will lose income of up to £21 per personal search, estimated at approximately 80 per month.

**Implications of not taking action before next Executive:**

See 'Reason(s) for urgency' above.

**Comments of Head of Legal & Democratic Services on grounds of urgency::**

*Agreed that failure to act will have a serious effect on service delivery / significant over applications*

Certified and Agreed as Urgent:

Signed: *M. KPR*

Dated: *14.4.09*

STAGE B

Ref No

02/09

**Portfolio Holder**

Comments on action proposed:

Action: AGREED/NOT AGREED

Signature: *Aun Hottel*

Dated: *14/4/09*

**Overview and Scrutiny Chair**

Comments on action proposed:

Action: ~~AGREED~~/NOT AGREED

Signature: Kla G Connolly Dated: 15 April 2009

Head of Finance and Business Development

Comments on action proposed:

Further Finance involvement ~~will~~ will be input into may paper.

Action: AGREED/NOT AGREED

Signature: M. A. Dated: 15/4/09

Head of Legal and Democratic Services (Monitoring Officer)

Comments on action proposed:

As above

Action: ~~AGREED~~/NOT AGREED

Signature: M. J. J. J. Dated: 15/4/09

Other Consultees (State Name)

Comments on action proposed:

Action: AGREED/NOT AGREED

Signature: ..... Dated: .....

STAGE C

Ref No

02/09

To be completed by Originating Officer

I certify that Stages A and B of this procedure have been completed and the Urgent Action proposed will be implemented on or after the date of this certification

Signature: [Signature] Dated: 17/04/09

COPELAND BOROUGH COUNCIL – PROPERTY SEARCH FEES –  
FROM THE 20<sup>TH</sup> APRIL 2009

|  |  |
|--|--|
| LLC1 only (compiled information)   | £17.00   |
| LLC1 extra parcel of land (compiled information)   | £2.00  |
| LLC1 only (personal search)  | £11.00 (statutory fee)   |
| LLC1 extra parcel of land (personal search)  | £1.00 (up to a maximum of<br>£16.00) (statutory fee)                               |
| Standard search fee (LLC1 and CON29R enquiries<br>including highway authority questions)       | £95.00   |
| CON29R search fee (CON29 R enquiries including<br>highway authority questions but not LLC1)    | £78.00   |
| CON29O   | £10.00 each (Question 5)<br>£5.00 each (Questions 6 to 21)<br>£17.00 (Question 22) |
| Extra written enquiries<br>(not including highway questions – refer to Cumbria County Council) | £20.00 each  |

**Detailed Costs for Access to CON29R Enquiries**

|  | Personal requests   | Compiled information   |
|--|---|--|
| 1.1 (a) to (e) Planning decisions and pending applications | Free of charge  | £6.00  |
| 1.1 (f) to (h) Building regulations decisions              | Not available in unrefined form<br>(f) £2.00<br>(g) £2.00<br>(h) £2.00  | (f) £2.00<br>(g) £2.00<br>(h) £2.00                              |
| 1.2 Planning designations and proposals                    | Free of charge  | £3.00  |
| 2 (a) Publicly maintained highways                         | Not available – request should be made direct to Cumbria County Council | Reimbursement of charge made by Cumbria County Council*          |
| 2 (b) to (d) Adopted highways                              | Not available – request should be made direct to Cumbria County Council | Reimbursement of charge made by Cumbria County Council*          |
| 3.1 Land required for public purposes                      | Free of charge  | £3.00  |
| 3.2 Land to be acquired for road works                     | Not available – request should be made direct to Cumbria County Council | Reimbursement of charge made by Cumbria County Council*          |
| 3.3 Drainage agreements and consents                       | Not available- request should be made direct to United Utilities        | Not available- request should be made direct to United Utilities |
| 3.4 Nearby road schemes                                    | Not available – request   | Reimbursement of charge  |



|   |   |   |
|---|---|---|
|   | should be made direct to Cumbria County Council                         | made by Cumbria County Council*                         |
| 3.5 Nearby railway schemes  | Free of charge  | £3.00   |
| 3.6 Traffic schemes   | Not available – request should be made direct to Cumbria County Council | Reimbursement of charge made by Cumbria County Council* |
| 3.7 Outstanding statutory notices   | Not available in unrefined form   |   |
| (a) building works  | (a) £2.00   | (a) £2.00   |
| (b) environment   | (b) £2.00   | (b) £2.00   |
| (c) health and safety   | (c) £2.00   | (c) £2.00   |
| (d) housing   | (d) £2.00   | (d) £2.00   |
| (e) not available   | (e) not available   | (e) not available                                       |
| (f) public health   | (f) £2.00   | (f) £2.00   |
| 3.8 Contravention of building regulations   | Not available in unrefined form/ £3.00                                  | £3.00   |
| 3.9 (a) to (n) Notices orders directions and proceedings under Planning Acts – enforcement, stop and breach of conditions notices | Free of charge  | £15.00 (a) to (n)                                       |
| 3.10 Conservation area  | Free of charge  | £3.00   |
| 3.11 Compulsory purchase orders or decisions  | Not available in unrefined form/£2.00                                   | £2.00   |
| 3.12 Contaminated land  | Free of charge  | £3.00   |
| 3.13 Radon gas  | Free of charge  | £2.00   |
| Total   | £21.00  | £59.00  |

\* Charge made by Cumbria County Council as at 6<sup>th</sup> April 2009 for all highway information referred to in questions (2)(a) to (d), 3.2, 3.4 and 3.6 is £19.00.

Copies of the documents referred to in replies given to CON29R 1.1 (a) to (d) are available from the Council's Planning Department on (01946) 598419 at £10.00 per application file.