

STROUD DISTRICT COUNCIL

AGENDA
ITEM NO

CABINET

30 September 2010

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Report Title	LOCAL LAND CHARGES INCOME
Purpose of Report	To inform Cabinet of the: a) changes to Local Land Charges legalisation. b) impact legislation changes will have on income and the way in which the Authority delivers its Local Land Charges service. c) requirement to invest in cleansing a subset of historic Planning data so the Personal Search service can be provided online for free.
Decision(s)	Cabinet RESOLVES that £25,000 be taken from the Planning Delivery Grant reserve to cleanse existing Planning data.
Consultation and Feedback	Consultation with the LGA, Head of Legal Services and county-wide Local Land Charges group.
Financial Implications and Risk Assessment	Local Land Charges income is dependent upon demand and fees are set based upon a strict set of rules. Recent changes to Local Land Charges legislation will impact on income as we are unable to charge for a Personal Search which is now covered under the Environmental Information Regulations. The Planning Delivery Grant Reserve is the appropriate source to fund this cleansing of data. Des Knight, Interim Finance Manager Tel: 01453 754344 Email: des.knight@stroud.gov.uk Local Land Charges legalisation has changed rapidly, and a failure to respond now will result in additional and unnecessary expense for the Authority. Nick Watkins, Head of Communications Tel: 01453 754250 Email: nick.watkins@stroud.gov.uk
Legal Implications	Recent direction from Central Government has revoked the ability of local authorities to charge for personal searches with immediate effect. The reason is that this charging is incompatible with the Environmental Information Regulations (EIR) 2005, thus the charge is not lawful.

Legal Implications Cont'd/...	This revocation will have a huge impact on the revenue of all local authorities and pressure is being put on the government to put in place an alternative charging regime. However, until this is in place the information is to be provided for inspection at no cost. It is imperative that any data we hold is available in a format that will be the least cost effective and the “cleansing” of the data will go a long way in proving this service. Lisa Jones, Principal Solicitor Tel: 01453 754364 Email: lisa.jones@stroud.gov.uk
Report Author	Nick Watkins, Head of Communications Tel: 01453 754250 Email: nick.watkins@stroud.gov.uk
Portfolio Holder	Cllr Nigel Cooper (Cabinet Member for Finance) Tel: 01452 813870 Email: cllr.nigel.cooper@stroud.gov.uk
Options	<ol style="list-style-type: none"> 1. [Recommended]. Invest in cleansing the existing Planning data so that the personal search process can be provided online for free. 2. Do nothing, and continue to provide the personal search process through officers whilst being unable to charge a fee.
Performance Management Follow Up	
Background Papers/ Appendices	Appendix A - Environmental Information Regulations 2004

BACKGROUND

1. Defra, the Ministry of Justice and the Department for Communities for Local Government wrote to local authorities on the 27 July 2010 stating that “charging a fee for a personal search of the local land charges register is incompatible with the Environmental Information Regulations 2004 and the underlying 2003 EU Directive. The Government is therefore revoking the current £22 fee by amending the Local Land Charge Rule 1977. The amendment will come into force on 17th August,” which from the receipt of their letter provided only 18 days notice.
2. The legislative decision has thrown Local Land Charges services across the country into turmoil, as each is provided ‘at cost’. Removing an income stream with 18 days notice shows a lack of understanding and a disregard for the impact on Local Authorities, as the legislative changes are being made ahead of clear guidance, resulting in local authorities:
 - a) losing valuable income with no time to introduce new processes.
 - b) having to continue maintaining and providing the data for free.
 - c) being challenged by personal search agents for refunds backdated to 2005.
 - d) pressurising the Local Government Association, who have been unsuccessful in their challenge thus far.

LOCAL LAND CHARGES

3. As from January 5th 2010 the Local Land Charges service report to the Head of Communications.
4. The Local Land Charges service consists of two people: 1x fulltime (Stroud 3) & 1x 24 hrs per week (Stroud 4) to provide the following statutory functions:
 - Local Land Charges searches, which reveal information from:
 - Planning
 - Building Control
 - Environmental Health
 - Local Land Charges Register
 - Highways (GCC)
 - Personal Searches
 - Local Land Charges register
5. The Local Land Charges service is a statutory function based around 'searching, retrieving and packaging' other services information and so it relies on each component service to have well managed and easily accessible data. Currently the Local Land Charges service search information from:
6. Planning: An in-house database has been constructed for storage and retrieval of researched planning data, but there are no automated processes in place. Recent revisions to working practices result in less time spent on this function, but a major inhibitor to the efficiency of the process is the incompleteness of planning data held within the Planning system. Some searches may take minutes whilst more complex searches may take one or more days.
7. Building Control: All of the required data can be found within the Planning system. Some interpretation is necessary although in general terms, the process is swift (minutes at most). Only data from 1 April 2007 onwards is revealed, as clearly stated.
8. Environmental Health: Environmental Health provide answers to certain questions within the search process. A memo and accompanying plan are distributed internally. Hard copy responses are returned in about 48 hours. There is an internal recharge for this service.
9. Local Land Charges Register: The Local Land Charges register consists of twelve parts, and contains for example information relating to financial charges, conservation areas, etc.
10. Highways (GCC): This is conducted wholly by GCC Highways. A memo and accompanying plan are scanned and emailed to GCC. Responses are returned via email in approximately 48 hours, and we are charged for the service that GCC provide, which is recouped through the Local Land Charges search fee.
11. Personal Searches: This was a search of the Local Land Charges register for a statutory fee of £22, regardless of how efficiently the data is provided, and the:
 - a) fee was charged for each property or land parcel upon which information is made available to view.
 - b) website is available to view planning decision notices and consents. All consents are published, although depending upon the scheme the personal search agent may need to contact either Local Land Charges or Planning to clarify information which is held in a non-electronic format.

ISSUES & RISKS

12. As stated, from the 17th August 2010 local authorities can no longer charge the statutory Personal Search fee of £22, but must continue to maintain and make available the information.

Source: Statutory Instruments, No. 1812 - The Local Land Charges (Amendment) Rules 2010:

The Lord Chancellor, in exercise of the power conferred by section 14 of the Local Land Charges Act 1975(a) and with the concurrence of the Treasury, removes Schedule 3, Item 5 (Personal Search fee) since it is incompatible with the Environmental Information Regulations 2004 (EIRs) which implements Council Directive 2003/4/EC(b) on public access to environmental information.

13. The Environmental Information Regulations (see Appendix A), came in to force in 2004. The guidance notes issued state that each authority will need to assess its position in relation to claims for Personal Search refunds backdated to 2005.

Source: Explanatory Memorandum, No. 1812 - The Local Land Charges (Amendment) Rules 2010.

There may be an obligation on local authorities to refund the fee paid. Each case will depend on its own facts and, for example, an agent who has passed on the cost of the fee to another person might be unjustly enriched by a refund and not entitled to one. Local authorities will need to assess claims as they are made in the light of their own legal advice.

- a) The county-wide Local Land Charges group in consultation with the Heads of Legal Services and LGA advice notes have agreed that we should not be offering refunds. We do expect to be challenged by personal search companies, and will update our position in light of future legal decisions.

14. The Environmental Information Regulations may in time significantly impact and reduce the charging mechanism for a full Local Land Charges search, and may ultimately result in the Government removing the statutory requirement for local authorities to provide a Local Land Charges service. The Authority must position itself to provide all required information online for free to minimise future costs, and in the short-term market the value of its Local Land Charges services more aggressively.

Source: Explanatory Memorandum, No. 1812 - The Local Land Charges (Amendment) Rules 2010

Public authorities are required under the EIR to provide access to environmental information, including property search information, free of charge. They cannot make any charge for allowing an applicant to access any public registers or lists of environmental information or to examine the information requested at the place which the public authority makes it available for examination.

As it does not appear to be possible to segregate information that is non-environmental, the only way to ensure consistency between the Local Land Charge Rules 1977 and the EIR is to revoke the prescribed [Personal Search] fee; this instrument makes that change.

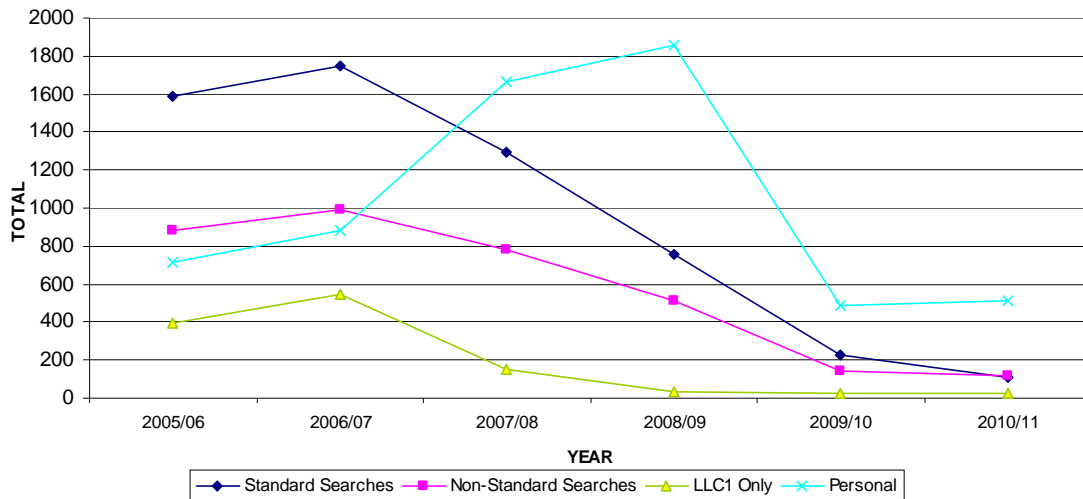
INCOME

15. The number of Local Land Charges searches requested and the income received has been in decline for several years. The expected income from personal searches was due to increase in 2010/11 due to a statutory increase in the fee, but the Ministry of Justice changes naturally negate that.

	Total Income in £1,000s					
	05/06	06/07	07/08	08/09	09/10	10/11
Standard Search	120	209	155	92	88	53
Non-Standard Search	140	118	94	66	63	62
LLC1 Only	6	3	2	<1	4	3
Personal Search	11	10	18	20	15	45
	277	340	269	179	170	163
GCC Highways		73	58	33	35	

Note: Figures are approximates. 2010/11 is projected based upon Q1.
 Note: GCC search fees are recouped as part of the LLC search fee.

LOCAL LAND CHARGES Total Annual Searches



16. For each of the issues and risks identified the potential impact is as follows:

Issues & Risks	Potential Impact
The Authority can no longer charge the statutory Personal Search fee of £22 from August 17 th 2010, but must continue to maintain and make available the information.	<u>2009/10/2010/11 est.</u> £15,000 / £45,000
The Environmental Information Regulations (see Appendix A), came in to force in 2004. The guidance notes issued states that each authority will need to assess its position in relation to claims for Personal Search refunds backdated to 2005.	The Legal advice is that we do not offer refunds. Subject to a future legal ruling, we could be asked to refund up to £74,000 (2005-09).

The Environmental Information Regulations may in time significantly impact and reduce the charging mechanism for a full Local Land Charges search, and may ultimately result in the Government removing the statutory requirement for local authorities to provide a Local Land Charges service. The Authority must position itself to provide all required information online for free to minimise future costs, and in the short-term market the value of its Local Land Charges services more aggressively.

Currently the direct staffing costs are £70,000 (approx.)

ADDRESSING THE ISSUES

17. To address the issues and risks we must act now to:

- a. Provide a free online self-service personal search. To do so we must first cleanse and address link all required data into the Planning system, removing the need for a Local Land Charges officer to manually search historic planning records.

Tests within Local Land Charges have determined that an average of 10 records can be cleansed and linked per day. We propose designating several people to the task to reduce the overall timeframe and to minimise the financial impact.

	No. Records To Cleanse & Link	Time Required
Listed Building Consent (1990>)	228	1 month
Listed Building Consent (2000 >)	2954	15 months
	3182	16 months

- b. Design against demand and improve the efficiency of the ‘search, retrieval and packaging’ process through a Systems Thinking review.
- c. Market our Local Land Charges service aggressively, demonstrating the value and guarantee that comes with a Local Authority providing the official certificate, as opposed to a personal search offered by an agent who cannot offer an indemnified guarantee.
- d. Continue to monitor, in conjunction with Legal Services, the impact of the Environmental Information Regulations on the entire Local Land Charges service, and design a route to make all Local Land Charges information available online for free, should further legislation force us to.

CONCLUSION

18. The Environmental Information Regulations forced Government to change the legislation regarding Local Land Charges fees for a personal search. The notice period provided has been completely inadequate and the lack of clarity between legislation and guidance notes has created confusion and challenge from personal search companies. The authority must position itself to mitigate against the loss of personal search income, and the expected future loss of income as the Environmental Information Regulations will surely impact on other areas of Local Land Charges income.

Environmental Information Regulations 2004 [Source: www.ico.gov.uk]

Environmental information is any information on, that is about, concerning, or relating to:

- a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- d) reports on the implementation of environmental legislation;
- e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and;
- f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);