

|                                    |                                |  |   |
|------------------------------------|--------------------------------|--|---|
| <b>Item No.</b>                    | <b>Classification:</b><br>Open | <b>Date:</b><br>March 2016                             | <b>Decision Taker:</b><br>Cabinet Member for<br>Finance, Modernisation and<br>Performance |
| <b>Report title:</b>               |                                | Local Land Charges Fees - for Local Authority Searches |   |
| <b>Ward(s) or groups affected:</b> |                                | All  |   |
| <b>From:</b>                       |                                | Strategic Director of Finance and Governance           |   |

## RECOMMENDATION

1. That the Cabinet Member for Finance, Modernisation and Performance agree that the current Local Land Charges Official Search Fee remains at £177.00, rising to £210.20 from the date set by HMRC for the introduction of VAT on CON29R and CON29O enquiries.

## BACKGROUND INFORMATION

2. Personal searches are made by personal search agents who inspect data held by the council. This data is held by various council departments, and may be available either directly from these departments or on the website. The council maintains a schedule of registers and information relating to local authority personal search enquiries which provides details of where data can be found. The personal search agents inspect these records, and compile a personal search on the basis of their research.
3. Pursuant to the Environmental Information Regulations 2004, the council is under an obligation to make “environmental information” available. The term “environmental information” should be interpreted broadly and would cover information of the type sought by personal search agents. Charges can be levied for providing access to data which falls within the classification of “environmental information”, provided the charge relates to “overhead” costs such as staff time, and is “reasonable” overall.
4. No charge for personal searches has been levied by the council since 1 August 2010.
5. In contrast, Official Searches are conducted by the legal profession on behalf of sellers and potential purchasers of property or land within the borough. The searches provide details of all subsisting registerable charges, such as financial, planning matters, Building Regulations and light obstruction that affect the property or land searched.
6. The fees charged for Official Searches are formed by two parts. The Official Certificate of Search (form LLC1) is currently £11.00 per search request. This is usually accompanied by a standard form of enquiries known as CON29R or CON29O, the fee for which is £166.00. A total fee of £177.00 is currently charged for basic Official Searches.

7. The fees for Office Searches and associated matters are reviewed regularly. The current fee of £177.00 has been in place since April 2015.
8. Although the Council has the power to set its own fees for Official Searches, the government announced in 2008 that the fees should be set so that they cover the cost of the searches and that they should not be used by councils as a source of income.
9. A comparison of the council's current fees for Official Searches with neighbouring and other Inner London Boroughs is shown at Appendix 1.
10. At its meeting on 5 November 2015, the Chartered Institute of Public Finance and Accountancy (CIPFA) VAT Committee, attended by representatives from HMRC, signalled an intention to charge VAT on local authority searches where refined data enquiries are made, namely CON29R and CON29O forms of enquiry. LLC1 searches would be exempt from VAT as they are provided under statute by local authorities and therefore under a special legal regime.
11. As such, VAT at 20% would be charged on the fee for a CON29R or CON29O enquiry (£166.00), from a date as yet to be set by HMRC, unless any evidence could be provided to prove that the forms of enquiry were under a special legal regime which overrides their decision to charge VAT, prior to this date. When the HMRC implement the requirement to charge VAT on the CON29R and CON29O enquiries, the charges will increase to reflect this, as sought in the recommendation above.

## **KEY ISSUES FOR CONSIDERATION**

12. The policy of increasing access to searches by way of the internet and web has meant that Local Land Charges have been able to provide completed searches through the National Land Information Service (NLIS) initiative. NLIS provides customers with an online facility to request searches and reduces dependence on paper based office processes, ultimately resulting in increased efficiencies and accountability.
13. Approximately 90% of completed official searches are returned to customers by e-mail and other electronic portals.

## **Policy implications**

14. Guidance has been provided to local authorities when setting their fees for local land charges.<sup>1</sup> This guidance includes the following:
  - 14.1 'Fees must be set to cover but not exceed the costs.'<sup>2</sup>
  - 14.2 'Registering authorities should review fees annually to check whether they remain appropriate.'<sup>3</sup>
  - 14.3 'Each authority must ensure that taking one financial year with another the income from fees charged for each service does not exceed the

---

<sup>1</sup> Guidance for Registering Authorities on Setting Fees for Local Land Charges in England January 2007

<sup>2</sup> Ibid para 2.3

<sup>3</sup> Ibid para 2.4

- costs of providing the service.<sup>4</sup>
- 14.4 'The cost of service ... should be the total cost of the provision of the service... This will include the direct costs of maintaining the local land charges register and its index and keeping them up to date. The cost will also generally include indirect costs, such as contributions to central and overhead costs, insurance, amortised costs, depreciation and cost of capital.'<sup>5</sup>
- 14.5 'In costing services registering authorities will have to estimate demand for the services. They should use experience and information available from previous years in making these estimates. There are a variety of forecasting methods, but as a starting point registering authorities may wish to gather data from the past five years, if possible, and then calculate a moving average to estimate future demand.'<sup>6</sup>
- 14.6 'The requirement to take 'one financial year with another' means that a registering authority should take account of surpluses and deficits in the current and previous years in setting fee for the forthcoming year so that, over time, income does not exceed costs.'<sup>7</sup>
- 14.7 '...registering authorities should be able to explain how the fees were calculated. It may be helpful for the published fees to be accompanied by an outline of the calculations used. The outline of the calculations used to reach the published fees should also be available on request.'<sup>8</sup>

15. The Office of Fair Trading has stated that local authorities should not be advantaged by virtue of the fact that they hold data.<sup>9</sup>

### **Financial implications**

16. The service is currently overachieving on budgeted income, as forecasted income for 2015/16 totals £853k against a budget of £727k. However the trend is downwards, as income in 2013/14 and 2014/15 totalled £1.06m and £998k respectively. It is therefore expected that in future years a shortfall against budget will develop. This reflects a downward trend in searches, from an average number of 3,742 per year over the three years 2012/13 to 2014/15, to the 2015/16 expected figure of 2,800. Southwark charges are at the higher end of the Inner London average (see Appendix 1).
17. It is also noted in paragraphs 10 and 11 above, that in future the HMRC will require VAT to be applied to the CON29R and CON29O enquiries. Therefore, prior to the agreed implementation date, operational processes will need to be reviewed to ensure that the VAT liability is appropriately charged and accounted for.

### **Staffing implications**

18. There are no staffing issues associated with this report.

---

<sup>4</sup> Ibid para 4.1

<sup>5</sup> Ibid para 5.3

<sup>6</sup> Ibid para 5.4

<sup>7</sup> Ibid para 6.3 on page 9

<sup>8</sup> Ibid para 7.4 on page 11

<sup>9</sup> 'To enable effective competition in compiling, unrefined property information must be made available on terms that do not discriminate against compilers on the basis of their status. In particular, LAs must offer PSCs and individuals access on comparable terms to those the LAs offer themselves when they compile local property searches.' Para 1.24 Property Searches: A market study, Office of Fair Trading September 2005

## **Community impact statement**

19. The impact of this decision is limited to those buying and selling property and it will affect all those within the borough who are buying and selling property. However the value of the fee is relatively small in relation to the cost of the property and the other costs involved in the property transaction. This decision has therefore been judged to have no or a very small impact on local people and communities.

## **Consultation**

20. No consultation is required.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Democracy**

21. The responsibility for setting of fees and charges under the council's constitution falls within the remit of the Cabinet Member for Finance, Strategy and Performance.
22. Regulation 8 of the Local Authorities (England) (Charges for Property Searches) Regulations 2008 ("the 2008 Regulations") enables the council to charge a fee for responding to enquiries about a property, and while the council has discretion about the level of charges it must have regard to the cost to the council. Fees in this context relate to responding to "Official Searches", and not to "Personal Searches". Section 13A of the Local Land Charges Act 1975 requires that fees are set on a cost recovery basis, and requires the council to have regard to guidance issued by the Lord Chancellor, referred to in the body of the report.
23. The Local Land Charges Rules 1977 permit local authorities to charge a fee for supplying an office copy of the register or any document, map or plan that had been filed by the authority in connection with a registration
24. The Environmental Information Regulations 2004 ("EIR"), which derive from European legislation, also require local authorities to make environmental information available on request within 20 working days of the request. The Regulations define environmental information as including information held about land and, as such, much if not all of the information held in the Local Land Charges Register is likely to be environmental information and governed by the EIR. The charging regime set out in the 2008 Regulations is subject to the EIR, which permit the council to charge a *reasonable amount* for requests made for environmental information. A "reasonable amount" has been interpreted by the European Court of Justice to include certain "overhead" costs, such as staff costs, provided the charge is "reasonable overall".

### **Strategic Director of Finance and Governance**

25. This report recommends that the Cabinet Member for Finance, Modernisation and Performance agrees the proposed non-statutory fees and charges for 2016/17, with an implementation date of 1 April 2016. Further it is noted that, at a future date, the fee will need to be increased to reflect changed VAT status of the Local Land Charges fees.

26. The Strategic Director of Finance and Governance notes the resource implications contained within the report and the comparison of proposed council fees with the appropriate inner London average. It is noted that the impact of fees remaining unchanged (in line with the London Benchmark) can be contained within the existing income budget, but that pressures may emerge in future years which will have to be absorbed within departmental budgets.

## BACKGROUND DOCUMENTS

| Background Papers   | Held At | Contact       |
|---|---------|---------------|
| Schedule of registers and information relating to local authority personal search enquiries | Website | Paul Horsnell |

## APPENDICES

| No.        | Title   |
|------------|---|
| Appendix 1 | Inner London Boroughs Search fees as at 1 February 2016 |

## AUDIT TRAIL

|   |  |                          |
|---|--|--------------------------|
| <b>Lead Officer</b>   | Duncan Whitfield, Strategic Director of Finance and Governance |                          |
| <b>Report Author</b>  | Paul Horsnell, Land Charges Manager                            |                          |
| <b>Version</b>  | Final  |                          |
| <b>Dated</b>  | 9 March 2016   |                          |
| <b>Key Decision?</b>  | Yes  |                          |
| <b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b> |  |                          |
| <b>Officer Title</b>  | <b>Comments Sought</b>   | <b>Comments included</b> |
| Director of Law and Democracy   | Yes  | Yes                      |
| Strategic Director of Finance and Governance                            | Yes  | Yes                      |
| <b>Cabinet Member</b>   | Yes  | Yes                      |
| <b>Date final report sent to Constitutional Team</b>                    |  | 9 March 2016             |

## APPENDIX 1

### INNER LONDON BOROUGH'S LOCAL LAND CHARGES SEARCH FEES AS AT 1 February 2016

NB. All Official Search fees effective from 1 April 2015, unless stated otherwise

| Authority                                       | LLC1         | CON29R        | Official Search fee (LLC1 & CON29R) |
|---|--------------|---------------|-------------------------------------|
| Camden  | 36.00        | 82.00         | 118.00                              |
| City of London                                  | 35.00        | 111.00        | 146.00                              |
| Greenwich                                       | 9.00         | 45.00         | 54.00                               |
| Hackney   | 43.00        | 87.00         | 130.00                              |
| Hammersmith & Fulham                            | 6.00         | 258.00        | 264.00                              |
| Islington                                       | 20.00        | 90.00         | 110.00                              |
| Kensington & Chelsea                            | 27.50        | 230.00        | 257.50                              |
| Lambeth   | 49.00        | 200.00        | 249.00                              |
| Lewisham  | 42.00        | 90.00         | 132.00                              |
| <b>Southwark (proposed)</b>                     | <b>11.00</b> | <b>166.00</b> | <b>177.00</b>                       |
| Tower Hamlets                                   | 40.00        | 160.00        | 200.00<br>Includes VAT on<br>CON29R |
| Wandsworth                                      | 18.00        | 53.00         | 67.00                               |
| Westminster                                     | 35.00        | 125.00        | 160.00                              |
| <b>Inner London average (with current fees)</b> | <b>28</b>    | <b>131</b>    | <b>159</b>                          |