

Report to the Cabinet

Report reference: C-004-2010/11

Date of meeting: 7 June 2010



**Epping Forest
District Council**

Portfolio: Legal and Estates

Subject: Local Land Charges – Access to Environmental Information

Responsible Officer: Alison Mitchell (01992 564017).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

To note the Information Commissioner's guidance on charging for access to environmental information and to request updates as further legal advice is received on the potential impact of the Environmental Information Regulations.

Executive Summary:

The Information Commissioner's Office (ICO) published guidance that in its opinion the majority of the information provided by local authorities in response to property searches enquiries is likely to be environmental information and charges should only be raised in accordance with the Environmental Information Regulations 2004 (EIR). Legal advice has been sought by the Local Government Association (LGA) as to the correctness of this opinion as this would have an impact on the fees Council's could charge.

Reasons for Proposed Decision:

The advice of the LGA will have an impact upon the income of this Authority.

Other Options for Action:

None

Report:

1. Members will be aware that the Council provides answers to Official Local Land Charges searches submitted by post and DX, on-line via NLIS and to personal searchers. The Official search comprises of two forms The LLC1 Certificate and the CON29R. The LLC1 Certificate is issued on completion of a search of the Local Land Charges register maintained by the Council. This currently costs £23.50. The second is form is the CON 29R Enquiries form, which is used to obtain information specifically held by the Local Authority, relating to properties within their District. The fees for the CON29R are set by the Local Authorities (England)(Charges for Property Searches) Regulations 2008 amended by the Local Land Charges (Amendment) Rules 2009 (the CPSR). These latter rules provide that the supplying of such information should be based on cost recovery to the Council.

2. A number of the Personal Search Companies have for some time demanded that this information be provided for free under the provisions of the EIR. Some have been submitting

cheques for payment under protest and have stated that they will take action to reclaim any overpaid fees.

3. The ICO has issued guidance to local authorities as to how they should respond to requests made for local property search information, what the relationship is between the EIR and the CPSR and in particular whether information provided in response constitutes environmental information as defined by the EIR.

4. The overview from the guidance is as set out below and reference to the FOIA refers to the Freedom of Information Act 2000.

- The majority of the information provided by local authorities in response to property search enquiries is likely to be environmental information as defined by the EIR.
- The charging provisions in the CPSR do not apply to environmental information.
- Under the EIR a public authority should accept an applicant's request to inspect the information.
- Environmental information that is inspected by the applicant cannot be charged for.
- Public authorities cannot use the publication scheme provisions of the FOIA to charge for environmental information contained in property search records.
- Information that is not environmental should be considered under the FOIA. In such cases, the CPSR can form the basis for any charging.

5. If this were correct the amounts that could be charged, where applicable, would lead to a substantial reduction in income of the Authorities and the LGA has taken a leading role in co-ordinating a response. Legal advice has been sought and local authorities are waiting for the LGA to issue guidance. There is a clear conflict between the EIR and the charging regulations.

Resource Implications:

The Revised Estimate for 2009/10 was £159,400 with an actual outturn of £183,482 showing an increase in activity for the year. The Estimate for 2010/11 is £177,300. Currently the LGA guidance is to continue charging until absolute clarity for both personal and official charging is available from the Government.

Depending upon the outcome of the LGA guidance and Government views, income could be reduced with a further sum also may be required to repay fees charged in previous years.

Legal and Governance Implications:

Local Authorities (England)(Charges for Property Searches) Regulations 2008 amended by the Local Land Charges (Amendment) Rules 2009, Environmental Information Regulations 2004, Freedom of Information Act 2000

Safer, Cleaner and Greener Implications:

None

Consultation Undertaken:

LGA

Background Papers:

Guidance issued by the ICO on 16th July 2009...

Impact Assessments:

Risk Management

None

Equality and Diversity: Not applicable

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? N/A

What equality implications were identified through the Equality Impact Assessment process?
N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group? N/A