



Agenda item:

Summary

Report for:	Strategic Planning and Environment Overview and Scrutiny Committee
Date of meeting:	12 April 2016
Part:	1
If Part II, reason:	

Title of report:	Local Land Charges
Contact:	Cllr Graham Sutton, Portfolio Holder for Planning and Regeneration James Doe, Assistant Director – Planning, Development and Regeneration
Purpose of report:	To report on land charges service update
Recommendations	That the report be noted
Corporate objectives:	The report focuses on the service plan for the area and key performance indicators. All corporate objectives are therefore relevant.
Implications:	<u>Financial</u> None arising directly from this report.
'Value for money' implications	<u>Value for money</u> None arising directly from this report
Risk implications	Risk Assessment completed as part of the service plan.

Community Impact Assessment	None arising from this report.
Health and safety Implications	None arising from this report.
Consultees:	<p>Cllr Graham Sutton, Portfolio Holder for Planning and Regeneration.</p> <p>Mark Gaynor, Corporate Director for Housing and Regeneration</p> <p>Sara Whelan, Group Manager for Development Management and Planning</p> <p>Chris Taylor, Group Manager for Strategic Planning and Regeneration</p> <p>Steve Baker, Assistant Director and chief Monitoring Officer (Chief Executive's Unit)</p>
Background papers:	<p>Planning and Regeneration Service Plan 2013-2015</p> <p>Performance information held on the CorVu system.</p>
Glossary of acronyms and any other abbreviations used in this report:	

Background

This is an update paper setting out the position of the Land Charges service and discussing the options for its future.

Glossary

Local Land Charges: (LLC)
Local Land Charges Register (LLCR)
Local Land Charges Institute (LLCI)
HM Land Registry (HMLR)
Local Authority (LA)
Local Government Association (LGA)
Department of Communities and Local Government (DCLG)
National Land and Information Service (NLIS)
Land Data is the governing body for NLIS
Court of Justice of the European Union (CJEU)

COPSO is the representative for the Personal Search companies.
Geographical Information system (GIS)
Environmental Information Regulations (EIR)
Information Commissioner's Office (ICO)
Local Land Charges institute (LLCI)

Context

A Local Land Charge is a restriction or obligation that is binding on future owners of a property or a parcel of land. Examples of such charges are Tree Preservation Orders, Section 106 Legal Agreements, Conditional Planning consents, Listed Building status, Enforcement notices.

The Local Land Charges Team is responsible for maintaining the Register of Local Land Charges and completing the Official Local Authority Local Land Charges search, with the aid of other departments for the Con29 replies. The section plays an important part in the conveyance process.

A Full Local Authority Land Charges Search comprises of:

- LLC1 Form (Register of Local Land Charges)
- CON29R Form (Enquiries of the Local Authority.) These include: Highways information; Building Control; Planning History; Core Strategy policies such as Conservation Areas; possible Enforcement Notices.
- A CON29O Form is also available for optional enquires. These include: Common Land enquiries: Public Rights of Way.

Fees:

<u>Search type</u>	<u>Fee</u>
LLC1 and Con29R (Residential Properties)	£99
LLCI and CON29R (Commercial Properties)	£190
LLC1 (Search of Land Charges Register only)	£30
CON29R Only (Residential Properties)	£69
CON29R Only (Commercial Properties)	£160
CON29O Enquiries	£12 each (Except Q22 - Commons Search)
CON29O Q22 - Commons Search	£20

Extra parcels of land

£20

Income received from Local Land Charges searches

Financial Year 2013 – 2014: £277,518.00

Financial Year 2014 – 2015: £288,004.00

1st April – 29th February 2016: £258,053.00

Personal searches

The Local Land Charges service provided by the Council operates in a competitive environment, with competition coming from Personal searchers.

A personal search is an inspection of the Local Land Charges Register. Personal searches can be made by members of the public or their Agent, but by appointment only.

The average market share for the Personal Search companies during **2015** was **34.51%**

The average market share for the Personal Search companies during **2014** was **38.55%**

At Dacorum Borough Council the Local Land Charges Register is stored partially electronically and partially in manual files. This data is not currently available for public viewing. This means that in order for a personal search to be conducted the Local Land Charges Team must collate all the relevant information in advance and provide it for inspection. We are working towards making this data wholly electronic, so that staff can work remotely and that our storage requirements suit the new way of working in the Forum building.

A personal search is currently free of charge. If all the information could be made available on line then we may be able to charge for this service. There are challenges in making the information available on line. The results of a personal search include information dating back to 1948, therefore a lot of data would need to be pulled together and be sure that it was correctly laid out, to limit mistakes.

The main reason for error if a member of public was searching on line would be where a site has changed name, for example four houses known as 1-4 High Street, are demolished and redeveloped to provide eight flats, known as 1-8 High Street the land parcel is the same but the address is different. Searching the history of one of the new flats, 7 High Street would also need to include the previous history of 1-4 High Street in its previous form of houses. Therefore the data needs to be plotted correctly.

VAT

It was proposed that on 1st February 2016 VAT will become payable on part of the Local Authority Local Land Charges search. This will be payable on the Con29 form fees and **not** the LLCR as this is a statutory service.

This has now been delayed until 4th July 2016 after intervention from the Local Land Charges institute (LLCI). This will now give all those involved in the property search market time to prepare, including the software suppliers who have indicated that their system updates may not have been ready in time for the proposed date in February. LLCI have also asked for full implementation details as VAT receipts will have to be produced.

We have set up a VAT Receipt template in readiness for the changes and will advertise the change in fees ahead of the 4th July 2016.

New Con29 Forms

New Con29 forms come into effect on the 4th July 2016.

The Law Society has released the new CON29 forms to LLCI ahead of the go-live date, to allow local authorities to carry out necessary preparations and training ahead of the formal launch of the new forms on 4th July 2016.

This will involve a lot of time and work for the LLC section and we will need to liaise with our software provider IDOX and all the other departments to ensure an easy transition.

As a result of the changes to both the CON29 and CON29O we may need to review our costs, to ensure that they comply with the Charges for Property Search Regulations (in so far as they still apply to “official” CON29 responses and referring to the guidance previously issued by Bevan Brittan/LGA)

Local authorities traditionally review fees in readiness for a 1st April introduction, LLCI is asking that wherever it is appropriate and excepting any change to the VAT position CON29 fees are not revised until July 2016.

HM Land Registry Local Land Charges Project

This work will have major implications for how DBC provides the Local Land Charges service.

On the 12th February 2015 the Department for Transport announced that the Infrastructure Bill has received Royal Assent. The Bill includes provisions to allow HM Land Registry to provide a single, digital Local Land Charges service. This applies to the Local Land Register and not the replies to the CON29.

Timeline

The migration programme is currently expected to take up to eight years for migration as follows:-

70% by April 2020

80% by December 2020
100% by July 2023

Migration will not start until the second half of 2017 at the earliest. Every authority needs to provide a full LLC service until at least then, and for most authorities well beyond. Authorities will receive several months' notice of when the migration of their LLC service to Land Registry will start. Following migration of the LLC Register and searches of it authorities will still have to register LLCs with Land Registry and of course be expected to provide a CON29 service for the foreseeable future.

The Land Registry has just announced that the consultation on **secondary legislation** for Local Land Charges (LLC), originally planned for autumn 2015, is being rescheduled. This is to provide an opportunity for Land Registry to share details of the future service with key stakeholders prior to the consultation. The current intention is now to run the 12 week consultation Spring 2016.

Secondary legislation will then be laid before parliament either in October 2016 but if that date is missed it will then be April 2017. It is not completely clear at this stage what the legislation will cover but the rules and fees are expected to be included.

Whilst the Local Land Charges Institute is one of the key stakeholders on the Land Registry LLC Advisory Board, this does not mean the Institute now supports the project but that they are looking to get the best possible outcome for the service, users, and local government.

HM Land Registry has committed to establishing a **New Burdens Working Group** in order to take this piece of work forward in a collaborative way. The group will consist of - Land Registry, Local Government Association (LGA), Local Land Charges Institute (LLCI), DCLG and up to 6 local authorities.

HMLR have started their data sampling exercise which will eventually see them visit every local authority. Each borough has been assigned an HMLR contact and as well as acting as our first point of call with HMLR they will be arranging the data sampling visit. The data sampling meeting for Dacorum was held in October 2015.

The collection of this data not only helps to provide a greater understanding of the volume and types of data and how its stored, which in turn feeds into the data capture and new burdens elements of the project.

Each LA is statutorily bound to continue to maintain, keep and provide official searches and access to the Local Land Charges register until such time as the data for the authority has been migrated to HMLR. At this stage it is thought likely that LAs will be asked to continue to update the LLC register for their LA area post data migration. There are currently no published proposals to take the CON29 Enquiry service away from local authorities. The need for a fully resourced Local Land Charges Service in each LA will remain at the very least until full data migration (for that LA) has taken place and very likely beyond.

Environmental Information Regulations

The Environmental Information Regulations 2004 provide public access to environmental information held by public authorities.

The Regulations do this in two ways:

- public authorities must make environmental information available proactively;

- members of the public are entitled to request environmental information from public authorities.

Following the CJEU ruling in the *East Sussex County Council v (1) Information Commissioner (2) Property Search Group (3) Local Government Association* case, we have received a Legal Briefing Note outlining the outcome and guidance on charging for EIR. The key points being:

Staff salary costs for the time staff spend answering requests for environmental information can be included in charges;

Overheads attributable to staff time (e.g. heating, lighting, staff training) spent on answering individual requests for information can be recovered through charges for supplying environmental information.

The overall charge must not exceed a reasonable amount. The charge must not exceed the authority's actual costs.

Costs associated with maintaining a database cannot be included in charges for supplying environmental information;

The Court's decision is binding law in the UK and all public authorities will be expected to comply with it.

Litigation summary

The charges levied by local authority land charges departments for property searches were previously regulated by statute which set out either a mandatory charging basis (the Local Land Charges rules which previously set the fee for a personal search of the local land charges register at £11/£22) or a permissive charging basis (e.g. the Charges Regulations 2008 which direct authorities on how to set their own charges for personal searches of other items, e.g. highways and building control data).

For the last few years, private property search companies ("PSCs") who carry out numerous searches every day in local land charges departments to prepare search materials which are then sold onto the public, have complained that the fees set by authorities are incompatible with the Environmental Information Regulations 2004 (the "EIRs"). The EIRs were brought into force on 1 January 2005 as a means of implementing the 2003 EC Directive on public access to environmental information.

It became clear that central government had failed to realise that the EIRs could be said to apply to the vast majority of property search data, given that the definition of "environmental information" in the EIRs is very wide indeed. In August 2010 the government revoked the personal search fee of the local land charges register because it was incompatible with the EIRs. The EIRs specifically state that environmental information contained on a register or list must be made available for personal inspection free of charge.

The result of central government's failure to appreciate the conflict between the EIRs and the existing legislation is that numerous private property search companies have now brought and or threatened legal action against authorities for charges levied from 1 January 2005 onwards (and in some cases prior to that date) which are alleged to be unlawful under the EIRs.

There are a number of PSCs levying claims for refunds against authorities, but the vast majority have joined one of two camps (the "PSG/Tinkler Solicitors" group, and

the "APPS/Norton Rose Fulbright" group). The PSG/Tinklers group issued proceedings against 185 authorities including Dacorum Borough Council and these have been settled by way of Consent Order, each authority having reached agreement with those claimants on the sums to be refunded.

Performance Statistics

See attached CorVu report graphs which monitor numbers of Official LLC searches received and the average turnaround time to complete them.

Note:

The high turnaround figures in June 2015 were due to the gazetteer migration to Acolaid which had unforeseen complications.

The high turnaround figures at the beginning of 2014 were due to maternity leave and maternity sickness.

Paperless working and working from home.

From 1st January 2015, with the introduction of a Local Land Charges Information @ Work system, we no longer keep any paper files.

We receive the vast majority of our searches electronically. We receive almost 50% of our searches electronically via the National Land Information Service (NLIS). We have actively encouraged our customers and solicitors to send in their searches by email with payments by BACS. There are some solicitors however who prefer to send in paper searches but these are now returned to them by email only, thereby cutting down on printing.

The above together with the scanning of the Planning Street Registers, Plotting Sheets and LLC street cards have enabled the team to be able to work from home.

The introduction of E-post for Local Land Charges will also enhance our service. This is due to be introduced in summer 2016.

A fantastic advancement towards paperless working has been made within the LLC section over the past two years. This will hold us in good stead for the move to The Forum.

Service Development

The main work priorities for the next year next year (2016/17) are;

- Scanning - of all remaining paper/microfiche documents including, Tree Preservation Orders, plotting sheets microfiche and various other paper registrations.
- Fees - A full review of our fees to ensure that we comply with the Charging Regulations and to ensure that our current income is not at risk. We will need to review our fees in light of the new CON29 questions. Start charging for EIR. A reduction in the cost of the LLC1 would be beneficial prior to its migration to HMLR.

- LLC Register to be made available on the website - This is primarily for the Personal Search companies. We could then charge for an enhanced service if they wish us to do the work for them. For example we could offer them an official LLC1 at a fee.