

to Ms Maxine Walker
Department for Communities and Local
Government
5/K10
Eland House
Bressenden Place
London SW1E 5DU

date 1 June 2011

my ref JW0130.DOC/DLK
your ref

Dear Ms Walker,

**THE NEW BURDENS (REVOCATION of the PERSONAL SEARCH FEE OF
THE LOCAL LAND CHARGES REGISTER) GRANT DETERMINATION 2010 –
2011 No. 31/1874**

Thank you for your letter on the above subject.

It would be very helpful if you could provide me with further clarification on a number of points.

I understand from your letter that the total amount of grant that has been made available for the purpose is £11.2m and this is to be divided equally between all registering authorities.

For Wirral this would amount to £37,355. This falls far short of the total shortfall that we will incur relating to the period for 2005 up to date of revocation in 2010.

Over this time we undertook a total of 13,705 searches – this would equate to a potential liability of £177,458 without having regard to any loss of fees for the remainder of the financial year 2010/2011.

I would therefore be grateful if you could advise me of what account was taken of the losses of income that will be incurred by individual local authorities when establishing both the total amount of grant available and the method of distribution of this grant.

If it was not the intention of Ministers that local authorities would be liable for reimbursing the full cost of all personal searches undertaken since 2005, I would

be grateful for your advice on what grounds you believe that we could resist fully refunding claims on personal searches undertaken since 2005.

I would also be grateful if you could give me any indication of what further funding has been considered as part of the Spending Review.

I look forward to hearing from you. A copy of this letter will be sent by email to the Ministry of Justice, Department for Environment and Rural Affairs and the LGA.

Yours Sincerely

J Wilkie
Chief Executive

Brendan Walsh, Department for Environment, Food and Rural Affairs
Paul Hughes, Ministry of Justice
Peter Mathew, DCLG
Paul Grey, Assistant Director, Wirral Council

From: [redacted]@sevenoaks.gov.uk]
Sent: 24 March 2011 12:30
To: maxine.walker@communities.gsi.gov.uk
Cc: paul.hughes@justice.gsi.gov.uk; Environmental Information Unit (CIO-KIM) (Defra)
Subject: The New Burdens Grant Determination 2010-11 No 31/1874

Dear Ms Walker

I refer to the letter to Chief Executives dated March 2010 relating to the revocation of the personal search fee of the Local Land Charges Register detailing the £34,355.83 amount to cover both potential restitutionary claims and loss of fees foregone in 2010/11.

I would be grateful for confirmation of how the total fund on £11.2m was arrived at and whether the Council will be fully re-imbursed if the cost of successful refund claims exceeds the amount currently allocated. I understand that most, if not all, Council's provided estimates of the possible costs incurred during the summer of 2010 and given the estimate for this Council, £4,862 in lost income and £86,724, far exceeds the current allocation I would have considered it appropriate for the allocation to reflect the actual risk to which each council has been exposed in applying what were requirements under then current government directives and regulations.

Yours sincerely

[redacted signature block]

Sevenoaks District Council

[redacted contact information]



[Redacted address lines]

*Answered
25 February
By [initials]*

8th February 2011

Brendan Walsh
Department for Environment Food and
Rural Affairs
Nobel House
17 Smith Square
London
SW1P 3JR

Direct Line: [Redacted]
Direct Fax: [Redacted]
Reply to: [Redacted]
Our Ref: [Redacted]
(please quote this reference on all correspondence with us)

Dear Mr Walsh,

RE: Statutory Fee Abolished

Following the recent advice from DEFRA the Council has been left in a very difficult position. The revocation of the fee and the potential costs involved in this process has created a great deal of concern and uncertainty. This situation has the potential to impact seriously on the residents of East Staffordshire.

As you will be aware, the income from providing search information is used to make information more widely available and this ensures that home owners can buy their property with confidence. However, last year Local Authorities suffered loss of income in two areas. Firstly, the abolition of the Home Information Pack Regulations resulted in Personal Search Companies ceasing to purchase Con29R Questions, a crucial part of the Official Local Authority search. This was followed by the revocation of the Personal Search Fee. The resultant loss of income will inevitably fall on all Council Tax payers and they will thus be subsidising Private Search Companies.

East Staffordshire Borough Council is proud of its record in keeping Council Tax rises to an absolute minimum. We do not want to be forced into a position where such rises are not predicated on informed service decisions or be financially penalised for a situation that is not the fault of the Council. We have acted in good faith by charging the previously required statutory fee and have provided an excellent service to both our Personal and Official Search customers.

Town Hall, King Edward Place, Burton upon Trent, Staffordshire. DE14 2EB
www.eaststaffsbc.gov.uk



Local Authorities need to be re-assured that any loss of income will be reimbursed, particularly as there is now an obligation to offer the Personal Search service free of charge.

This Council is in the business of ensuring that our Local Land Charges service provides value for money and operates on a commercial basis as far as is possible within the regulations. This ensures that we are focused on winning customers, increasing our market share and above all providing a quality service. You will be aware that the collection, collation and publication of information is expensive and the Council needs to recover these costs. We would wish to recover costs through an appropriate fee structure where those that receive the service pay rather than the general public through increases in Council Tax.

The method of announcement has thrown the entire Local Government sector into some disarray on the matter. East Staffordshire Borough Council is used to delivering solutions rather than problems and our Officers are actively involved with the LGA and other authorities in delivering a solution. We would like to work with DEFRA, the MOJ and CLG to resolve a problem which is not of our making but which impacts directly on our finances. We hope for a solution that ensures information is made available to inform and protect home buyers but where those that derive commercial benefit pay a fair proportion of the cost involved in providing the service.

Should you require any further information or wish to discuss the matter further we are always happy to assist.

Yours faithfully

[Redacted signature]

[Redacted name]

[Redacted title]

[Redacted email address] @eaststaffsbc.gov.uk

Town Hall, King Edward Place, Burton upon Trent, Staffordshire. DE14 2EB
www.eaststaffsbc.gov.uk





one Derby one council

Brendan Walsh
Department for Environment Food and Rural
Affairs
Nobel House
17 Smith Square
London
SW1P 3JR

Your ref
Our ref [redacted]
Contact [redacted]
email [redacted]@derby.gov.uk
Tel [redacted]
Fax [redacted]
Minicom [redacted]
Date 16 December 2010

Dear Brendan

Local Land Charges Register – Revocation of Personal Search Fee

Following the recent advice that has come from Defra the Council has been left in a very difficult position. The revocation of the fees and the potential costs involved in this process has created a great deal of uncertainty. This does have the potential to impact seriously on Derby City residents. The loss of income to the authority from Personal Search fees alone is £66k annually. In addition to this, when the Home Information Pack regulations (HIPs) were in place, it was anticipated that companies would be required to purchase CON29R questions. Following the withdrawal of HIPs companies no longer paid for those questions resulting in a loss of income of £39k annually to the authority.

As you will be aware the income from providing search information is used in order to make information more widely available and as such ensures that home owners can buy their property with confidence. Derby City Council is proud of its record in keeping Council Tax rises to an absolute minimum. We do not want to be forced in to a position where such rises are not predicated on informed service decisions or be financially penalised for a situation that clearly is not the authorities fault. We feel that we have acted in good faith by charging the previously required statutory fee and that we provide an excellent service to both our Personal and Official Search customers. Local Authorities need to be reassured that the loss of income outlined above will be reimbursed now that we are obliged to offer this service for free.

This Council is in the business of ensuring that our land charges service provides value for money and operates on a commercial basis as far as is possible within the regulations. This ensures that we are focused on winning customers, increasing our market share and above all providing a quality service. You will be aware that the collection, collation and publication of information is expensive and the Council needs be able to recover these costs. We would like to recover these through an appropriate fee structure and not through taxation.

The method of announcement of the fee withdrawal has thrown the entire local government sector into some disarray on this matter. Derby City Council is used to delivering solutions rather than problems and our Officers are actively involved in assisting the LGA and other authorities in delivering a sector wide solution. We would like to work with DEFRA, the MOJ and CLG to ensure that a problem that, while not of our making, impacts directly on our finances is solved ensuring that the information is made available but that those deriving commercial benefit pay a fair proportion of the costs of making this information available. If funding arrangements are being made to recompense local authorities for the current and future financial years losses, please could you advise of the process that will be adopted.

We would appeal to you to assist local government on this issue to ensure that no additional burden is imposed on the people of Derby.

Should you require any further information or wish to discuss the matter further then we are always happy to assist.

Yours sincerely

[Redacted signature]

[Redacted line]

[Redacted line]

Date: 1 December, 2010

Telephone: [REDACTED]
Direct Dialling: [REDACTED]
Starfax No: [REDACTED]
DX Nuneaton [REDACTED]

Department of Environment, Food & Rural Affairs,
Information Rights Team,
Knowledge and Information Management,
Area 1B, Ergon House,
Horseferry Road,
London.
SW1P 2AL

e-mail:
philip.richardson@nuneatonandbedworth.gov.uk

Our Ref: [REDACTED]

Your Ref:

Please ask for: [REDACTED]

For the attention of : Mr Brendan Walsh

Dear Mr Walsh,

Property Searches

Thank you for your letter of 27th September 2010, a copy of which is enclosed for ease of reference.

There is clear legal consensus that the personal search fee is incompatible with the Environmental Information Regulations 2004 and the underlying 2003 EU Directive. However the suggestion by Defra that this Council has acted unlawfully by wrongly charging the fee since January 2005 is not accepted.

Article 10 of the Directive specifically requires that:

"Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14th February 2005. They shall forthwith inform the Commission thereof"

The Government implemented the Directive in the form of the Environmental Information Regulations with a commencement date of 1st January 2005, however it took no action at that time, nor indeed until 17th August 2010 being the operative date of the Statutory Instrument revoking the personal search fee, to address this issue of incompatibility with the Local Land Charge Rules 1977.

The long standing doctrine "Generalia specialibus non derogant" (The general does not detract from the specific) supports the proposition that lawmaking bodies usually need to be explicit if they intend to repeal an earlier law.

Continued ...

X528-2/58926



The Nottingham
Declaration on Climate Change

Nuneaton & Bedworth Borough Council
www.nuneatonandbedworth.gov.uk



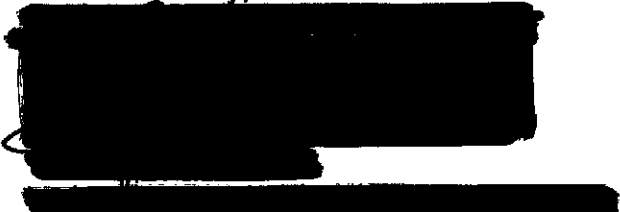
INVESTOR IN PEOPLE

Described in *The Vera Cruz* (1884) 10 App. Cas. 59 as: "Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any evidence of a particular intention to do so." This means that if a later law and an earlier law are potentially - but not necessarily - in conflict, courts will adopt the reading that does not result in an implied repeal of the earlier statute.

The failure to promulgate the appropriate legislation to give full effect to the Directive clearly shifts the onus of responsibility for charging for personal search fees from Local Authorities, complying lawfully with domestic legislation, to Central Government. It must logically follow that any measures now required to redress this failure must be funded by Central Government and not Local Authorities.

I look forward to receiving your comments.

Yours sincerely,

A large black rectangular redaction covers the signature and name of the sender.

Enc

-----Original Message-----

From: [REDACTED] (GCSX) [mailto:[REDACTED]@eppingforestdc.gcsx.gov.uk]

Sent: 04 November 2010 15:18

To: Environmental Information Unit (CIO-KIM)

Cc: [REDACTED]

Subject: Property Searches for the attention of Brendan Walsh

You replied to a letter from [REDACTED] on the 28 September 2010 regarding the prescribed fee for a personal search of the local land charges register which was declared unlawful from 1 January 2005.

You mention in your fourth paragraph that there should be no overall cost to the Council in the current year as the loss of income will be met by central government under the "new burdens doctrine". For future years you say that the ongoing loss will be part of the spending review.

With regard to the current year personal land search companies are now requesting refunds of fees paid going back to 1 January 2005.

Can you clarify how Epping Forest District Council can claim this cost of lost income in the current year. Will there be a certified claim to be completed at the year end?

We are currently finalising budgets and need to know how the cost of lost income and refunds will be paid to the Council.

Thanks

[REDACTED]
[REDACTED]
[REDACTED]

Tel: [REDACTED]

FAX: [REDACTED]

[REDACTED]@eppingforestdc.gov.uk

Democratic and Legal Services

**Nelson Town Hall, Market Street,
Nelson, Lancashire, BB9 7LG
DX [REDACTED] NELSON**

Telephone: [REDACTED]

Minicom: [REDACTED]

Fax: [REDACTED]

Date: [REDACTED]

Our Ref: [REDACTED]

Your Ref: [REDACTED]

Ask for: [REDACTED]

Direct line: [REDACTED]

E-mail: [REDACTED]

Service Manager: [REDACTED]

www.pendle.gov.uk

30th September 2010

@pendle.gov.uk

**Mr Brendan Walsh,
Department for Environment, Food
and Rural Affairs,
Information Rights Team,
Knowledge and Information
Management,
Area1B, Ergon House,
Horseferry Road,
LONDON SW1P 2AL**

FIRST CLASS

Dear Mr Walsh,

Property Searches

I refer to your letter of 27 July.

At its meeting on 23 September, my Council's Executive considered the financial consequences for this Council of the measures announced in your letter. The consequences for my Council (and no doubt for many other Councils) will be very significant. In particular:

1. The Council has immediately lost around a third of its current income from local land charges searches, without any recompense, and
2. The issue of repayments to personal search companies has been raised and correspondence is being received from personal search companies who have become aware of the new regulations. In my view, it is by no means clear that any repayments are payable to those companies. To succeed in a claim, the search companies would have to prove a financial loss. Against any such claim would be the facts that work was carried out by the Council to tailor the information and the search companies concerned will no doubt themselves have charged a fee to their clients for the information. However, if all the claims which could be made against my Council were successful, the Council's liability, excluding staff time, would be in the region of £74,000.

This situation is particularly unsatisfactory against the background that, at the time when these fees were charged, there was an express power for the Council to make those charges under Regulations made under the Local Land Charges Act

1975. Also, the personal search fee itself was actually increased as recently as the autumn of 2009.

Against this background, I have been instructed to write to you expressing the Council's concerns and to arrange a meeting between representatives of the Council and Andrew Stephenson MP to discuss these issues.

Finally, I note in your letter of 27 July that you are working with the LGA to review guidance on charging for environmental and other property information. It is clearly now essential that this guidance is finalised and issued to Councils as soon as possible. Could you give me an indication please of when it is expected that this guidance will be published?

I look forward to hearing from you.

Yours sincerely,

[Redacted signature]

[Redacted name and title]

Working for you

The Right Honourable Caroline Spelman
Secretary of State
Department of the Environment Food &
Rural Affairs
Noble House
17 Smith Square
LONDON
SW1P 3JR

Our Ref
Your Ref
Date

AB/DM/030689
2 September 2010

Dear Secretary of State

PROPERTY SEARCHES – ABOLITION OF PERSONAL SEARCH FEE

I refer to the letter dated 27 July 2010 from Brendon Walsh in the Information Rights Team in your Department and the response dated 6 August 2010 from Baroness Eaton, The Chairman of the Local Government Association.

Mr Walsh's letter invites Councils to assess the impact of the changes. The Council estimates the income lost for the remainder of 2010/11 will be in the region of £12,000 and if it is required to repay the statutory fees back to January 2005 the liability could amount to £104,000.

Any review of the situation also needs to take into account the effect on Local Authorities in respect of information required to complete the CON29 form agreed between Local Authorities and the Law Society. This information is also for the most part environmental information and the charges made for access to it are permitted by the Local Authorities (Charges for Property Searches) Regulations 2008. The loss of income if these charges are foregone is estimated at around £250,000 per year. A major concern in relation to the CON29 information is that the Environmental Information Regulations appear to give the public a right of access to the raw data by inspection within various different Council departments. This would create serious problems requiring significant capital investment before the public could safely be given access to this raw data.

The Council strongly supports the view expressed by Baroness Eaton. This situation is not of the Local Authority's making. It is inappropriate that the letter of 27 July refers to Local Authorities "wrongly" charging fees since January 2005. Local Authorities have been complying with the Local Land Charges Rules 1977 as amended and with the instructions of

Office of the Chief Executive

030689/89526

Council Offices, Crescent Gardens, HARROGATE HG1 2SG
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www.harrogate.gov.uk

successive Governments. In these circumstances it is unreasonable to expect us to pay back money charged in compliance with national legislation.

Yours sincerely



Wallace Sampson
Chief Executive
chiefexecutive@harrogate.gov.uk



Councillor Dr M Gardner
Leader
leader@gw.harrogate.gov.uk

Copied to: The Right Honourable Kenneth Clarke QC MP
Secretary of State for Justice
102 Petty France
LONDON
SW1H 9AY

The Right Honourable Eric Pickles MP
Secretary of State for Communities and Local Government
Eland House
Bressenden Place
LONDON
SW1E 5DU



East Lindsey
DISTRICT COUNCIL

Tedder Hall, Manby Park, Louth, Lincolnshire. LN11 8UP
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Mr Brendan Walsh
DEFRA
Information Rights Team
Area 1B, Ergon House
Horseferry Road
LONDON SW1P 2AL

Dear Mr Walsh

Property Searches

Further to your letter to all Local Authority Chief Executives in England, dated 27 July 2010, I write to register East Lindsey District Council's concerns at the decision to require Local Authorities to cease charging for personal searches of the Local Land Charges Register (LLCR).

Whilst this decision in itself is somewhat disappointing, I appreciate that DEFRA is still working with the LGA to review guidance on charging for environmental and other property information for the future.

The major concern, however, is the requirement to consider the provision of refunds for past charging to January 2005 on two fronts: -

- The requirement to make budget provision for these cumulative amounts at this time of severe financial constraint is wholly unreasonable and this requirement for back dating to January 2005 should be scrapped. Maintaining the funding for front line services will be challenging enough over the next few years without having to find potential six figure sums for refunds. This can only be to the detriment of local services and jobs.
- The lack of criteria advice against which to consider such refunds is also unacceptable. The correspondence received suggests each Local Authority should take its own legal advice and consider its own criteria for refunds. Whilst being exceptionally wasteful across the Country in duplicated legal advice and fees, this also sets the potential for a lack of a consistent approach and, as a consequence, for Local Authorities to be played off against each other.

If you would like this information in another language, large print or Braille please contact us.

Osoby pragnące uzyskać informacje w innym języku, proszone są o zawiadomienie rady lokalnej 01430 457377

如果您想要這份資料的其它語言版本，請告訴 01430 457375

Se desejar obter esta informação num idioma alternativo, por favor contacte 01430 457378

Если Вы хотите получить эту информацию на каком-либо другом языке, пожалуйста, сообщите об этом 01430 457389

Your Reference:

Our Reference: Ldr//BH/Orgs.

Contact: [REDACTED]

Direct Dial: [REDACTED]


Email: [REDACTED]@e-lindsey.gov.uk

Date: 1 September 2010



I would urge Government to rethink its approach to the scrapping of charges for Personal Land Searches and that the requirement for refunds at the expense of local services is withdrawn. If this is not possible, at the very least there needs to be a national framework for the consideration of refunds against which all Local Authorities can apply a consistent approach.

Yours sincerely

A handwritten signature in black ink that reads "Doreen Stephenson". The signature is written in a cursive style with a large initial 'D'.

Councillor Doreen Stephenson
Leader
East Lindsey District Council

Our Ref

Your Ref

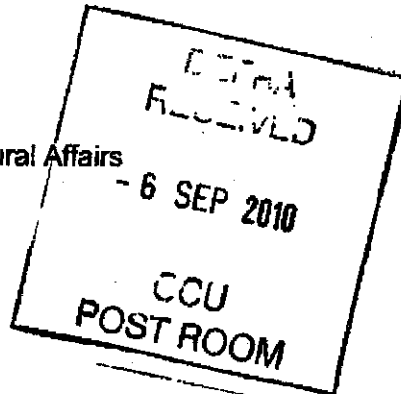
Please ask for

Telephone No.

E-mail [redacted]@dudley.gov.uk

1st September 2010

To Rt. Hon Caroline Spelman MP
Secretary of State
Dept. for Environment, Food & Rural Affairs
Nobel House
17 Smith Square
London SW1P 3JR



Dear Caroline

RE: LOCAL LAND CHARGES REGISTER SEARCH FEES

I wish to express my great concern in relation to the letter that all local authorities received on the 27th of July 2010, from your Department informing them that charges for a personal search of the land charges register were to be abolished and instructing consideration of refunds on fees charged since January 2005.

On the matter of the personal search fee, I will say no more, as it is now claimed that the fee is not compatible with the Environmental Information Regulations that were introduced in 2005 and thus is not a lawful charge.

The issue of liability for refunds is an entirely different matter. Local Authorities have raised these charges, and other related charges for property searches, on the basis of very clear rights to charge, enshrined in legislation and subject to much consultation and guidance in recent years. If the government now takes the view, as it appears to do from the letter of the 27th July, that its legislation governing charging was incompatible with European law, then it cannot expect the Council and ultimately the tax payer to bear the cost of putting it right. It is estimated that the cost of refunds to Dudley MBC alone, would be approximately £185,000.

Furthermore, to suggest that it is up to each authority to take steps to identify those who were wrongly charged, and to assess independently the legitimacy of refund claims, will at least double the cost to the Authority for any refunds.

I am not satisfied that these suggestions are cost effective, efficient or enforceable. I look forward to hearing from you.

Yours sincerely

[Redacted signature block]

[Redacted footer area]

Your reference:
Our reference: KD/LHF/L3
Enquiries to: Mr K Douglas
Direct Dial: (01768) 212200
Date: 31 August 2010

11

Eden

District Council

Town Hall Penrith Cumbria CA11 7QF
Telephone: (01768) 817817
Facsimile: (01768) 890470
Internet: www.eden.gov.uk
Email: chief.exec@eden.gov.uk

Via Email: catherine_anderson@rorystewart.co.uk
The Rt Hon Rory Stewart MP

Dear Rory

Property Searches

I attach for your information, a recent letter from Défra relating to property searches and their decision to revoke the ability of local authorities to charge £22 for a personal search and also to instigate a refund process for those people who have paid this charge since its introduction in January 2005.

Whilst I appreciate that due to recent court rulings the Government have little choice but to revoke the charge, this will mean an increased cost to the local taxpayer as local authorities will still be required to make this facility available.

This means that there will be a loss of approximately £7,000-£8,000 per year to the Council. I do not expect an adjustment to our RSG to be made to compensate the Council for this loss. In the period 2005 to date, we have collected £39,000 and dealt with 3,264 personal searches.

The key issue for this Council is the question of refunds and the need for Councils to try to achieve a refund on this process. This will clearly be a big issue for this Council both in the need to repay the fees and also the workload and cost to achieve that result.

Whilst we are still awaiting guidance, we are assuming there will be no transitional funding to either meet the cost of repayment or to undertake the work to achieve a refund. This process was introduced as a duty on Local Government and indeed they doubled the fee in 2009/10 and so it is not appropriate that local taxpayers should meet the cost of this change.

I would ask that you raise this matter with the Minister concerned and seek to either limit the period to which back payments are required (possibly two years?) or to provide some transitional funding to Local Authorities to deal with this 'one-off' cost. A payment per fee refunded to cover administration costs would be helpful.

I attach the correspondence for your information so you are aware of the background.

Kevin Douglas
Chief Executive

I have asked Gordon to speak to you and brief you on the Issue so I have copied him into this correspondence.

If you have any queries, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K Douglas', written in a cursive style.

Kevin Douglas

Enc

cc Councillor G Nicolson
P Foote, Director of Corporate & Legal Services

Land Charges Personal Searches

Fee payable to 31/12/2009 = £11

Fee Payable from 01/01/2010 = £22

Fees received from January 2005		
Jan/Feb/Mar 2005	49 @ £11	£539.00
2005-06	326 @ £11	£3586.00
2006-07	422 @ £11	£4642.00
2007-08	725 @ £11	£7975.00
2008-09	766 @ £11	£8426.00
2009-10	679 @ £11 165 @ £22	£7469.00 £3630.00
2010-11 to date	132 @ £22	£2904.00
Total Potential Refund		£39171.00



North Warwickshire
Borough Council

DEFRA
RECEIVED
06 SEP 2010
CCU
POST ROOM

Jerry Hutchinson LLB MBA Solicitor
Chief Executive
The Council House
South Street
Atherstone
Warwickshire
CV9 1DE

Rt Hon Caroline Spelman MP
Secretary of State
Department for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
London
SW1P 3JR

Switchboard : (01827) 715341
Fax : (01827) 719225
E Mail : llc@northwarks.gov.uk
Website : www.northwarks.gov.uk
This matter is being dealt with by

Direct Dial : [REDACTED]
Your ref :
Our ref :

Date : 27 August 2010

Dear Caroline

In relation to the letter dated 27 July 2010 from Brendan Walsh, of the Information Rights Team, informing us that charges for personal searches of the local land charges register were to be revoked, and instructing consideration of refunds on fees charged since January 2005.

This Authority, following government advice, moved to a cost recovery scheme for its Local Land Charges service on 1 January 2010 following the increase in the statutory Personal Search Fee. Now we have been informed without prior consultation that the government has taken the view that its legislation governing charging was incompatible with European law and has revoked the fee; leaving us with a budgetary deficit and removing the "level playing field" the new legislation was supposed to create.

The letter also states that DEFRA will be working with the LGA "to review guidance on charging for environmental and other property information so that EIRs are more clearly understood", yet the personal search fee has been abolished on the basis that this is unlawful.

In relation to refunds, it is unreasonable to expect local council tax payers to fund the cost of a mistake made at national level, in applying a statutory fee to the service in a way which is incompatible with European law. The reality is that we face the likelihood of having to find resources to make substantial refunds over and above any cuts that we will have to make as a result of the spending review.

Could you also please clarify the meaning in the section of the letter which states that we need to "consider bringing a potential refund to the attention of those who have been wrongfully charged", since 2005, and that "measures taken by a public authority for this purpose should be proportionate to the sum refundable". Does this mean that if the cost of administering any refund exceeds the amount to be refunded then we should not process any refunds? In any event how could we do this when the majority of personal searches are undertaken by companies on behalf of an individual, and any refund to the company would provide unjust enrichment?

I look forward to your reply.

Yours sincerely

[REDACTED SIGNATURE]





Stephen Maddox
Chief Executive

Town Hall
Brighton Street
Wallasey
Wirral
Merseyside CH44 8ED
Fax: 0151-691 8583
Email: stephenmaddox@wirral.gov.uk

to Mr Brendan Walsh
Department for Environment, Food & Rural Affairs
Information Rights Team
Knowledge and Information Management
Area 1B, Ergon House
Horseferry Road
LONDON SW1P 2AL

date 25 August 2010

my ref SM0376.DOC/DLK
your ref

tel 0151-691 8589 please ask for Steve Maddox

Dear Mr Walsh,

PROPERTY SEARCHES

I refer to your letter of the 27 July 2010, the contents of which are of great concern and disappointment to this Council. There are a number of matters on which I would seek further clarification and guidance.

The fee for a personal search has, as you know, been set in statute under the Local Land Charges Act 1975 and the Rules made there under. Rule 14 of the 1977 Rules provides that 'the fees specified in Schedule 3 shall be payable in advance'. The fee was reviewed less than a year ago, when the Lord Chancellor made the Local Land Charges (Amendment) Rules 2009, (SI 2009/2494), which amended Schedule 3 by doubling the statutory fee for a personal search from £11 to £22. It is astonishing that, in making this statutory instrument in September 2009, the Lord Chancellor did not consider the possibility of the incompatibility with the Environmental Information Regulations that you have now identified. Further, by making the statutory instrument, the Lord Chancellor led this Council to believe that the fee was lawful.

The appropriate statutory fee has been charged over the years, and the Council is now at a loss to understand how it can now be suggested that the proposed amendment will have a retrospective effect, resulting in a liability on the Council to refund fees that were charged in good faith in reliance on the relevant statutory instrument, which indeed made the fee mandatory. The initial estimate of the cost to this Council of such refunds is £500,000, and this does not take account of the considerable officer time and other incidental costs that would be involved in publicising the availability of refunds and administering repayments.

I should be obliged if you would advise what government funding will be made available for this, given that the Council has relied on a mandatory, statutory basis for the charging of the fee.

It also seems extraordinary that you are not offering any guidance to ensure uniformity in dealing with refunds. Personal search companies, as you must be aware, undertake the majority of personal searches, and it would be unrealistic to suppose that they have not recovered their disbursements through the fee charged to their clients.


With regard to the third and fourth paragraphs of your letter, it is of great concern to the Council that guidance on charging for environmental and other property information is not yet available. You have stated that local authorities will continue to be able to make reasonable charges where environmental information is supplied rather than inspected in person. I should be obliged if you would clarify this statement, and advise whether or in what circumstances a charge other than a nominal printing/photocopying charge would be considered reasonable.

I should be further obliged if you would let me know also whether any consideration has been or is being given to the lawfulness of the fee for an official search of the local land charges register, also referred to in schedule 3, and for which the Council is currently empowered to set a fee under the amendments to the Local Land Charges Act 1975 introduced by the Constitutional Reform Act 2005.

Finally, it is noted that no impact assessment has been undertaken to accompany the proposed amendment. You will appreciate that there is an ongoing cost if the Council is to continue to maintain the local land charges register, and I should be obliged for your comments as to how this cost is to be met, especially in the current financial climate, if the Council is to be precluded from recovering its costs through fee income.

I look forward to hearing from you. A copy of this letter will be sent by email to the Ministry of Justice, Department for Communities and the LGA.

Yours sincerely



Chief Executive



14

East Herts Council
Council Offices, The Causeway
Bishop's Stortford, Herts
CM23 2EN
Tel: 01279 655261

Rt Hon Caroline Spelman MP
Secretary of State
Department for Environment, Food & Rural
Affairs
Nobel House
17 Smith Square
LONDON SW1P 3JR

Contact: [REDACTED]
Tele: [REDACTED]
Fax: [REDACTED]
Our ref: [REDACTED]
Your ref
Date: 25th Aug 2010

Dear Ms Spelman

LOCAL LAND CHARGES

East Herts Council wishes to express its dismay and concern over the decision made by the Government to revoke the statutory instrument giving effect to the charge for the personal search.

This was laid before Parliament without any prior consultation with councils who will be directly affected by the removal of the ability to charge.

Council is very concerned over the content of the letter of the 27th July from Brendan Walsh of your Department inferring that local authorities may have to issue refunds to people who have been 'wrongfully charged since January 2005'.

The provisions of the Local Land Charges Act 1975 and Local Land Charges Rule 1977, in this council's opinion, permit councils to charge the statutory fee set by Government namely £11 up to 31st December 2009, and £22 from 1st January to 17th August 2010.

Whilst you have not revoked the council's ability to charge for an official search, it is extremely likely that the majority of search requests will either now be made as personal searches or as a request to access a public register, both of which are stated as not chargeable under the Environmental Information Regulations 2004.

The vast majority of personal searches are undertaken by private sector personal search companies who charge the end user for

their services. Any request for a refund of past fees paid will require detailed investigation to discover who the person is who may have suffered any loss. If you accept that charges were unlawfully applied, such action would cost far more than the £11 (for anything pre 2010) that was paid.

By not also revoking the legal obligation on councils to maintain a Local Land Charges Register, council taxpayers will affectively be subsidising private sector land charge search bodies.

East Herts Council would like your assurance that Government will not only ensure that it will reimburse it in full for continuing to maintain the Local Land Charges Register, but will also reimburse the Authority should it be required to repay any fees.

Yours sincerely

[REDACTED]

[REDACTED]

East Herts Council

[REDACTED] [@eastherts.gov.uk](mailto:[REDACTED]@eastherts.gov.uk)

c.c. Mr M Prisk, MP
Mr O Heald, MP

Councillor Peter Box

Town Hall, Wood Street, Wakefield, West Yorkshire WF1 2HD

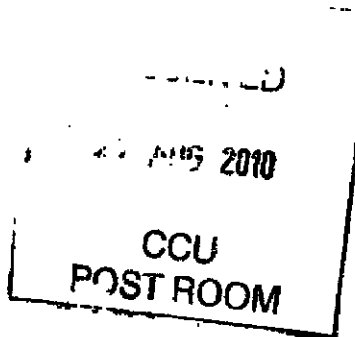
T 01924 305300 F 01924 305305

Typetalk calls welcome

PB/EH

24 August 2010

Rt Hon Caroline Spelman MP
Secretary of State
Department for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
LONDON
SW1P 3JR



Dear Secretary of State

PROPERTY SEARCHES

I am writing in response the letter dated 27th July 2010 received from Brendan Walsh, of the Information Rights Team in your Department.

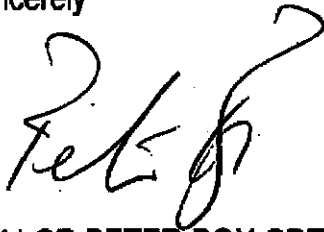
Firstly I would like to express my concern at the lack of consultation between Defra, the Ministry of Justice and the Department for Communities and Local Government with local authorities on the issue of personal search charges.

The basis for revocation of the personal search charge is that this is now seen by the government as being incompatible with the Environmental Information Regulations 2004 (EIRs) and the underlying 2003 EU Directive. However, despite being aware of the challenges in relation to the fees being made by Personal Search Companies under EIR, the government increased the statutory fee from £11.00 to £22.00 in January 2010.

Mr Walsh's letter states that local authorities will need to consider bringing a potential refund to the attention of those who have been wrongfully charged. The charges made by this, and all other authorities, in respect of a personal search were statutory charges laid down by the government and as such were mandatory. If as appears to be the case, the government now say these charges were wrongfully charged then the onus on refund is surely an issue for the government, not the council tax payer.

In view of the above I do not feel that it is up to this authority to assess the legitimacy of any refund claim and would advise that unless there is a decision by the courts to the contrary, the Council will not be refunding any personal search fees. I anticipate that other Councils will also be adopting the same viewpoint.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Box', written in a cursive style.

COUNCILLOR PETER BOX CBE
Leader of the Council

Cc: Baroness Eaton DBE
Rt Hon Kenneth Clarke QC MP, Secretary of State for Justice

In case of enquiry contact [redacted]
Direct Dial [redacted]
Fax 01223 457409
E-mail [redacted]@cambridge.gov.uk
DX 5854 Cambridge



Legal Services

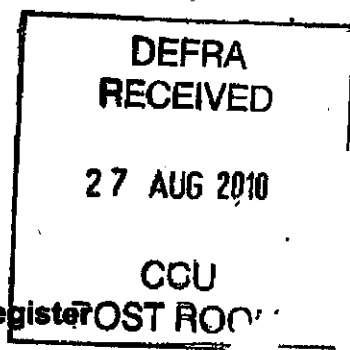
Rt Hon Caroline Spelman MP
Secretary of State
Department for Environment, Food and
Rural Affairs
Nobel House
17 Smith Square
London
SW1P 3JR

23 August 2010

Our Ref: SRP/FOI - 002891

Your Ref:

Dear Secretary of State,



Fees for Inspection of the Local Land Charges Register

I am writing to you at the request of the Leader of Cambridge City Council, Councillor Sian Reid, to comment on a letter dated 27 July 2010 from Brendan Walsh, of the Information Rights Team in your Department, informing local authorities that charges for a personal search of the local land charges register were to be abolished, and instructing consideration of refunds on fees charged since January 2005.

We have seen the letter to you from Baroness Eaton DBE, the Chairman of the Local Government Association, and fully support the comments she has made regarding the abolition of the fee and urging clarification and financial support.

Local authorities have acted in good faith in making this charge, which was prescribed by statutory instrument. We strongly endorse the comments made by Baroness Eaton regarding the need for Central Government leadership and support in dealing with the unintended consequences for the local land charges service of implementation of the Access to Environmental Information Regulations, which threaten the viability of the service as a whole.

Continued:/

[redacted]
Cambridge City Council, The Guildhall
Cambridge, Cambridgeshire, CB2 3QJ.
Telephone 01223 457000, Facsimile 01223 457409
Minicom 01223 457050, DX 5854 cambridge



We ask the Coalition Government to implement the steps urged by Baroness Eaton in her letter.

Yours sincerely,

A large black rectangular redaction box covering the signature of the sender.

**cc. Lord McNally,
Minister of State,
Ministry of Justice,
102 Petty France,
London SW1**

**Andrew Stunell MP
Parliamentary Under-Secretary of State
Department for Communities and Local Government
Eland House, Bressenden Place,
London, SW1**



Councillor Mrs Gillian Brown
Leader of the Council

[Redacted]
Bognor Regis
West Sussex [Redacted]

Tel/Fax: [Redacted]
e.mail: [Redacted]

23rd August 2010

The Rt Hon Caroline Spelman MP, Secretary of State
Department for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
LONDON
SW1P 3JR

RECEIVED
24 AUG 2010
CCU
POST ROOM

Dear Secretary of State

Property Searches

I would like to draw your attention to the very difficult financial position the Government is placing local authorities in by compulsorily revoking the current £22 fee for personal searches of the Council's Local Land Charges Register (LLCR).

More financially difficult still is the Government's ruling that the statutory £22 fee charged by all local authorities has been invalid since the Environmental Information Regulations came into force in 2005 and that consideration must be given to bringing a potential refund to the attention of those who have been 'wrongfully' charged.

I enclose a copy of a letter dated 27th July 2010 sent from DEFRA to this Council's Chief Executive, on behalf of DEFRA, the Ministry of Justice and the Department of Communities and Local Government.

It sets out the Government's view that the £22 personal search fee charged under the Local Land Charges Rules 1877 is incompatible with the Environmental Information Regulations 2004.

Not only are local authorities instructed to stop making any charge for any future personal search of the LLCR, they are also being burdened with the task of a potential refund to those who have paid the fee since 2005 and putting in place measures to evaluate the evidence needed from claimants to establish the entitlement to a refund.

Cont'd Over

2

23rd August 2010

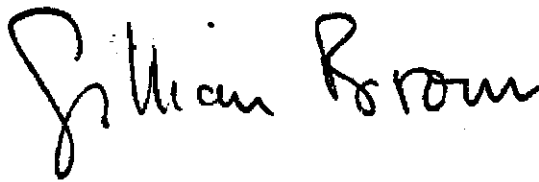
The letter from DEFRA seems completely at odds with the Coalition Government's commitment to decentralisation, local decision making and localism. It also has serious financial consequences for the Council at a time which is already extremely challenging for local authorities as I am sure you are aware. The letter also fails to provide clear advice on how to provide information on making refunds, and it is left to each local authority to seek its own legal advice. Insult is added to injury by drawing attention to the transparency agenda.

I would be most grateful if you could exercise any influence you have to request the Government to rethink its approach to the scrapping of these charges, which are necessary to cover the costs of providing the LLCR, and which otherwise will have to be borne by the other Council taxpayers. It seems both unjust and wholly unacceptable for Council taxpayers to foot the bill not only for future personal searches of the LLCR, but also, according to the Government, for refunds going back to 2005!

At the very least, there needs to be comprehensive advice issued nationally to enable consistent consideration of applications for refunds, to avoid each local authority 'inventing its own wheel'.

I do hope you are able to assist in this matter.

Yours sincerely

A handwritten signature in black ink that reads "Gillian Brown". The signature is written in a cursive, flowing style.

Councillor Mrs Gillian Brown
Leader of the Council

Copied to: The Rt Hon Kenneth Clark, QC MP
 The Rt Hon Eric Pickles, MP
 Nick Herbert Esq, MP
 Nick Gibb Esq, MP
 Peter Bottomley Esq, MP

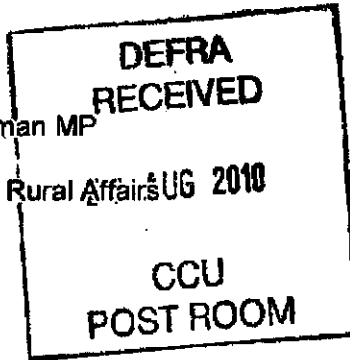
Please reply to :

Direct Dial [redacted]

Email [redacted]@torridge.gov.uk



The Right Honourable Caroline Spelman MP
Secretary of State
Department for Environment, Food & Rural Affairs UG 2010
Noble House
17 Smith Square
LONDON SW1P 3JR



[redacted]

Riverbank House
Bideford
Devon
EX39 2QG

Our Ref : [redacted]
Date 18 August 2010

Your Ref :

DX:53606 Bideford

Tel [redacted]

Dear Sirs

PROPERTY SEARCHES

I write following the letter dated the 27th July from the Information Rights Team within the Department for Environment Food and Rural Affairs but stated to be also written on behalf of the Ministry of Justice and the Department for Communities and Local Government.

Office Hours
Mon, Tue, Wed, Thu
8:45am - 5:15pm
Friday
8:45am - 4:45pm

The letter makes clear that the previous statutory fee charged for a personal search was incompatible with the Environmental Information Regulations 2004 and then advises that the legislation imposing that fee will be revoked as from the 17th August.

Chief Executive
Nicola Bulbeck

The letter very unhelpfully then goes on to state that where the fee has been wrongly charged since 2005, the Authority ought to consider making refunds to those "wrongly charged". The fees charged since 2005 have been charged by Local Authorities because they have been obliged to do so by legislation imposed by Central Government. To suggest that this Authority should now repay those fees, which were correctly charged in accordance with that legislation, is wholly inappropriate. Given the fact that Local Authorities were merely complying with the legislation in imposing the fee, could you please let me know whether any measures are being put in place by the Government to reimburse Local Authorities where such refunds are required to be given.

Strategic Director
Jenny Wallace



100%

The letter and the legislative amendments still leave Councils in a very uncertain position. While clarity has now been provided over the personal search fee for inspecting the Local Land Charges Register, there is still uncertainty over whether the fees authorised to be charged under the Local Authorities (England) (Charges for Property Searches) Regulations 2008 are also incompatible with the Environmental Information Regulations. These fees include fees for accessing other registers and information to provide answers to the CON29 enquiries and also for fees charged for collating information to provide responses to official search requests.

/ continued

I did have an email exchange with officials at both the Ministry of Justice and Communities, a copy of which is enclosed. However, since that date, no satisfactory response has been provided.

Can you please let me know as soon as possible whether the Government intends to pass further legislation to provide clarity on this point. If so, could you also please confirm that the issue of refunds will be dealt with in a more sensitive manner, given the vastly increased cost implications to Local Authorities. As an indication of this, Torridge District Council are a very small District Council but the amount received in such fees in the last 5 years is around £750,000.

I look forward to hearing from you with your views as soon as possible.

Yours faithfully

[Redacted signature]

[Redacted name]

Enc

Your reference
Our reference
Date 17th August 2010

19
city of
stoke-on-trent



To: Brendan Walsh
Information Rights Team
Knowledge and Information Management
Area 1B, Ergon House
Horseferry Road
London
SW1P 2AL

Regeneration Directorate
PO Box 630
Civic Centre, Glebe Street
Stoke-on-Trent ST4 1RF

Dear Mr Walsh

Re: Abolition of Personal Search Fee

I am writing in response to your letter of 27th July 2010 informing the Council of the Government's intention to abolish the £22 fee for personal searches of the Local Land Charges Register, and the associated statutory instrument number 1812/2010.

We think it is unfortunate that no impact assessment was done to accompany this legislative amendment because it will have significant implications for the Council and the services which we offer. The impact of the change on the Council's income will probably prevent the Council from purchasing software which would have significantly promoted easy access to local land charge information. It will also inevitably have a negative effect on the Council's ability to continue offering its existing property search services.

As regards the question of refunding charges levied in compliance with domestic law over the last 6 years, the Council's exposure in this respect is likely to come to approximately £141,680. There is also the risk of further refunds in relation to other property search fees, given the inevitable wider implications of a change such as this.

In view of the fact that the Council has relied on a mandatory, statutory fee to levy these charges in the first place, the Council will be looking to Government to provide funding to administer and pay for any refunds. We would be grateful if you could let us know how Government plans to address this issue.

Yours sincerely

Mohammed Pervez
Leader of City Council

Hardial Bhogul
Chief Operating Officer

Please tell us if you need this letter in large print, audio tape, computer disk or Braille

Excellent services, valued by customers

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telephone 01782 234567

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minicom 01782 232331

text 07786 200700

email @stoke.gov.uk

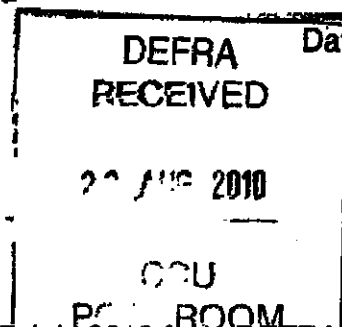
www.stoke.gov.uk



INVESTOR IN PEOPLE

Rt Hon Caroline Spelman MP
Secretary of State
Department for Environment, Food and
Rural Affairs
Nobel House
17 Smith Square
London
SW1P 3JR

Councillor Tony de Vere
Leader of the Council
tony.devere@whitehorsedc.gov.uk
Tel: 01235 540391
Our ref: TDV/MH
Your ref:



Date 16 August 2010

Dear Mrs Spelman

Property searches

I refer to a letter dated 27 July 2010 from DEERA to this authority, advising that charging a fee for a personal search of the local land charges register is incompatible with the Environmental Information Regulation 2004 (EIRs) and the underlying 2003 EU Directive, and that the current £22 fee is to be revoked with this authority being advised to stop the charge with immediate effect. Furthermore, this authority has been advised that it needs to consider bringing a potential refund to the attention of those who have been wrongly charged since January 2005 when the EIRs came into force.

I am writing to express my concerns regarding this decision on two significant grounds and to ask you to reconsider the decisions taken.

Firstly, there is a cost to collecting, maintaining and supplying any information base. A personal search is for the personal benefit of an individual customer usually via a personal search company. The cost of extracting and providing this information to individuals actually exceeds the charge of £22 which we have been required to make. By revoking the charge, the cost of providing information from the local land charges register to businesses who make a profit on it, will now be met by the council tax payer. This is contrary to accepted principles of applying fees and charges to services which are of personal benefit to an individual rather than to the wider community.

Further, we do not have a customer-enabled IT system that allows individuals to inspect and extract their own information. To provide an inspection only service, we will have to invest in development of a new IT system which will result in yet further costs, again subsidised by the council tax payer. This IT investment cannot be a priority for our council at this time. We will therefore have to continue to provide this resource, expertise and printed copies of the relevant register entries to the personal search company. I am concerned that no consideration or consultation has been carried out with councils to establish the work involved in providing a personal search service and that by removing the fee and requirements at such short notice we have not been provided with any time to prepare.

Secondly, this decision will result in a loss of income to this authority of approximately £40,000 per annum, yet this service will still have to be provided, leading to cuts in other, essential, council services. The potential refund of 5 ½ years of payments plus the administration involved in facilitating this, will cost us over £150,000, all to be borne by council tax payers who receive no benefit. All this will have a significant financial impact on the authority and the services we provide at a time when financial pressures are significant and funding is reducing.

This council has not been wrongly charging as your letter states. These and other related charges for property searches were made on the basis of clear statutory requirements to do so. I therefore do not accept that we should be responsible for refunds on this basis. We do not have the funds set aside to issue such refunds from 1 January 2005.

I note you have invited the Local Government Association (LGA) to assist in an assessment of these changes on local government finances. We also seek a commitment that the government will compensate local authorities for the financial impact of this DEFRA decision. This authority has charged for property searches on the basis of clear statutory requirements to do so. If it is now the view that the legislation governing charging is incompatible with European law, then it cannot be appropriate to ask the council tax payer to bear the cost of putting matters right and we would hope that the government will now seek to remedy the injustice caused by the Environmental Information Regulation 2004 and underlying EU Directive 2003.

Yours sincerely



Cllr Tony de Vere
Leader of the Council



Listening Learning Leading

Rt Hon Caroline Spelman MP
Secretary of State
Department for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
London
SW1P 3JR

Ann Ducker
LEADER OF THE COUNCIL
ann.ducker@southoxon.gov.uk
Benson Lane, Crowmarsh Gifford
Wallingford OX10 8HQ
Tel: 01491 823131 Fax: 01491 823134

16 August 2010

Dear Mrs Spelman

Property searches

I refer to a letter dated 27 July 2010 from DEFRA to this authority, advising that charging a fee for a personal search of the local land charges register is incompatible with the Environmental Information Regulation 2004 (EIRs) and the underlying 2003 EU Directive, and that the current £22 fee is to be revoked with this authority being advised to stop the charge with immediate effect. Furthermore, this authority has been advised that it needs to consider bringing a potential refund to the attention of those who have been wrongly charged since January 2005 when the EIRs came into force.

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www.southoxon.gov.uk



Secondly, this decision will result in a loss of income to this authority of approximately £40,000 per annum, yet this service will still have to be provided, leading to cuts in other, essential, council services. The potential refund of 5 ½ years of payments plus the administration involved in facilitating this, will cost us over £150,000, all to be borne by council tax payers who receive no benefit. All this will have a significant financial impact on the authority and the services we provide at a time when financial pressures are significant and funding is reducing.

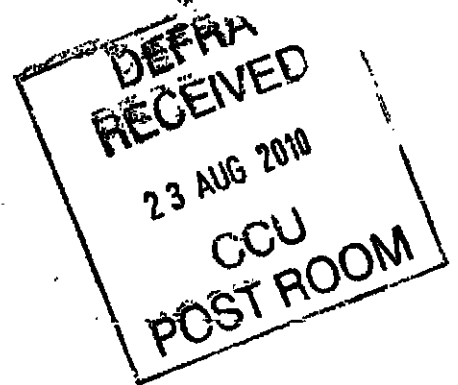
This council has not been wrongly charging as your letter states. These and other related charges for property searches were made on the basis of clear statutory requirements to do so. I therefore do not accept that we should be responsible for refunds on this basis. We do not have the funds set aside to issue such refunds from 1 January 2005.

I note you have invited the Local Government Association (LGA) to assist in an assessment of these changes on local government finances. We also seek a commitment that the government will compensate local authorities for the financial impact of this DEFRA decision. This authority has charged for property searches on the basis of clear statutory requirements to do so. If it is now the view that the legislation governing charging is incompatible with European law, then it cannot be appropriate to ask the council tax payer to bear the cost of putting matters right. And we would hope that the government will now seek to remedy the injustice caused by the Environmental Information Regulation 2004 and underlying EU Directive 2003.

Yours sincerely



Ann Ducker MBE
Leader of South Oxfordshire District Council



Civic Centre, Reading, RG1 7AE.
☎ 0118 939 0900
DX 40124 Reading (Castle Street)
Fax: 0118 939 0767
Minicom ☎ 0118 939 0700

Our Ref: [REDACTED]
Your Ref:

Direct:- [REDACTED]
e mail: [REDACTED]@reading.gov.uk

10th August 2010

Brendan Walsh
Department for Environment, Food and
Rural Affairs
Information Rights Team
Knowledge and Information Management
Area 1B, Ergon House
Horseferry Road
London SW1P 2AL

Your contact is: [REDACTED]

Dear Mr Walsh

**Property Searches
Land Charges, England
The Local Land Charges (Amendment) Rules 2010**

I am writing to you on behalf of my Council in response to your letter to me of 27th July and the issue of the Statutory Instrument No.1812 made on 12th July and which comes into force on 17th August.

The effect of revoking the Personal Search fee of £22 will have a large impact on the Council's income and impact on the work of my officers who will have to continue to make the same information available without recompense to the Council unless some monies can be recovered.

Based on the number of searches requested 2009/2010 our calculations are that the loss of a full year's income from the £22 Personal Search fee would be £55,000. In addition, due to the Environmental Information contained in the Council's first part of a full search, there would be a loss of £28,900. Further, our initial calculations of the implications of Environmental Information contained in other parts of the Search, are that the current cost of the Required Information at £69 may need to be reduced to £36, a projected loss to the Council's income of £52,800 per annum.

We estimate the total loss of income to be over £130,000 a not insignificant sum given that the work volume is not expected to decrease.

In response to Government encouragement, the Council has invested in technology to produce Local Land Charge search results electronically. This has resulted in our customers receiving results speedily and in a format that is easy to comprehend. The consequence of this action is that we are no longer able to supply index card and file information in a format available to the public for a Personal Search of the Local Land Charge Register or indeed much of the information required to complete the Required

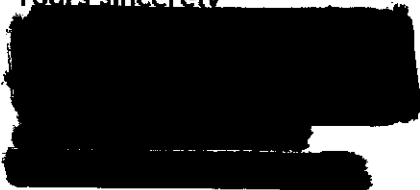


Answers. The cost of making such information available for public inspection therefore equates to the supply of such information in a compiled format. We are not therefore able to cut our costs of inspection of data, yet reading the 'explanatory memorandum' to the revocation of the fee together with your own department's guidance to charging under Environmental Information Regulations, will not legitimately be able to pass this cost of inspection on.

I note from your letter dated 27th July that the Council may face claims for refund due to the Personal Search fee being 'wrongly charged'. It is clear that the charges were made in compliance with Statute and were not therefore wrongful at that time. In the circumstances, if the Council is in receipt of any claims for refund, we propose to forward them to your Department and the Ministry of Justice for attention.

Given the timescale of the legislation, I would value your swift response and advice to my observations.

Yours sincerely

A large black rectangular redaction box covering the signature and name of the sender.

received 10 August 2010

2

Your Ref:

Our Ref: [REDACTED]

Contact: [REDACTED]



districtnk

100 flourishing communities

North Kesteven District Council

The Department of Environment,
Food and Rural Affairs
Information Rights Team
Knowledge and Information Management
Area 1b
Ergon House
Horseferry Road
London SW1P 2AL

For the attention of Brendan Walsh

9 August 2010

Dear Sir

PROPERTY SEARCHES

Thank you for your letter of 27 July 2010 giving information concerning the revocation of the current £22 personal search (PS) fee through making adjustments to the Local Land Charges Rules 1977.

As you state in the letter, this change has various significant consequences for local authorities and their customers. Therefore, it is extremely unhelpful for this letter to have been issued at this stage, when it is unclear what the impact will be, and when there is no clarity about how the process will work in the future. It therefore only creates confusion. It would have been far better to have established a framework on how the Government, in partnership with local Councils will work, and see how the service can be delivered in future.

There are two issues that spring from this confusion. The first concerns the fee being wrongly changed since January 2005.

You may recall that the Minister of Justice, the Department of Communities together with local Councils across the country, spent some time carrying out research to quantify and justify in terms of its cost, the charge for a PS. This was a very extensive and time consuming piece of work that local Councils undertook nationally. When the Environmental Information Regulations (EIR) 2004 was introduced, no information was given or sent to local authorities about its impact on PS charges. Had local authorities, at that point suspended their PS charges, then they would be open to strong criticism and challenge from various rate payers and other organisations, arguing that local authorities were not making use of national regulations and guidance to ensure they were recovering their costs and its adverse affects on the council tax payer.

Considerable work was done over the last 2/3 years on the PS fee, which resulted in an increase in the PS fee from £11 to £22. Surely it would have been apparent nationally, during these investigations/deliberations, that possibly a conflict existed between this piece of work and the 2004 Environmental Information Regulations. You may also recall that the CON29 was revisited as a result of the introduction of HIPs in August 2007, and again no connection or conflict with EIR was identified at that stage.

What is of real concern therefore is that local authorities are expected to find the cost of compensating personal search companies, some of which have already received subsidies from Councils (and the Council Tax Payer), for actions which it had no control over and was legally required to carry out. The Council does not consider that the PS companies are entitled to any compensation as this charge has been passed on to the public (their clients) who have incurred the cost. It is specific Members of the public as purchasers, who should be compensated, not companies who have also already had the benefit of subsidised information from local Councils across the country. It is clearly impractical, to expect local authorities to carry out research and incur even more costs for absolutely no benefit, to the disadvantage of the local tax payer.

Secondly however, there is also the more serious point which could have under lying, albeit perhaps unintentional consequences. This concerns retrospective legislation. If this position is accepted, and compensation is paid, then it sets a very serious and dangerous precedent for the future where actions have been taken and in future years proved to be wrong.

It is difficult to accept that this letter gives any guidance or any transparency in the matter. Unfortunately all it does, is confuse the position, and creates an even worse financial position, as the letter expects local authorities to carry out all sorts of extra investigations and research work for absolutely no benefit at all, and this, at a time when Councils are struggling to deliver services with much reduced finances.

What is desperately needed is a clear sense of joined up thinking between three different government departments. I therefore propose to write to the local MP's to express strong concern about how this issue has been dealt with, and the mess that has been created as a result.

I trust that you will take the points set out in this letter seriously, and give them the utmost urgent consideration.

Yours faithfully



Ian Fytche
Chief Executive

received 9 August 2010

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Legal & Democratic Services

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**DISTRICT COUNCIL
NORTH OXFORDSHIRE**

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6 August 2010

Dear Mr Walsh,

Re Property Searches

I write in response to your letter dated 27 July 2010.

There are a number of practical implications in revoking the personal search fee and identifying local land charge entries as Environmental Information that we suspect have been overlooked by DEFRA, MOJ and CLG and wish for your consideration and response on the following issues.

We appreciate your acknowledgement in the letter of the financial implications to Councils and look forward to receiving further guidance concerning charging urgently. It would appear that you have neglected to acknowledge that no information is free. A cost is incurred in collecting, maintaining and supplying any information. Therefore the cost of providing inspection of the local land charges register to private commercial businesses generating profit from their operations will now be subsidised by the Council Tax payer.

Furthermore, our register is maintained on an internal software system that does not have a customer access function (as is the case for many systems) as they were designed to provide a statutory paying service. At this time we are therefore unable to provide inspection to our register without officer resource and expertise in extracting the relevant register entries. We will have to continue to provide this resource and expertise and a print out of the relevant register entry(ies) and this will be given to the personal search company. To provide an inspection only service we will have to invest in development of another system. Quick investigations with our current software supplier have intimated a cost of somewhere in the region of £12,000 to £15,000. Since we now have to face an immediate drop in income this will also have to be subsidised by the Council Tax payer. We are concerned that no consideration or consultation has been carried out with Councils to establish the work



involved in providing a personal search service and that by removing the fee and requirements at such short notice we have not been provided with any time to prepare.

We insist that we have not been wrongly charging as your letter states. We were charging a statutory fee, and if we had not charged it, then we would have been in breach of legislation and subject to criticism from our auditors. We do not accept that we should be responsible for refunds on this basis and we do not have the funds set aside to issue such refunds from 1 January 2005, amounting to £132,868.00. The revocation of the fee could result in staff losses, the refund would most definitely

The above issues have been discussed with the City and District Councils of Oxfordshire and we are generally agreed on the points above.

We look forward to your response and urge you to work quickly in resolving the issues now encountered by Councils.

Yours sincerely

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Telephone: [redacted]
Fax: (01524) 582030
E-mail: [redacted]@lancaster.gov.uk
Website: www.lancaster.gov.uk
Our Ref: [redacted]
Your Ref:



Legal & Human Resources

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Brendan Walsh,
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LONDON
SW1P 2AL

2nd August 2010

Dear Mr Walsh,

PROPERTY SEARCHES

I refer to your letter of the 27th July 2010, the contents of which are of great concern and disappointment to this Council. There are a number of matters on which I would seek further clarification and guidance.

The fee for a personal search has, as you know, been set in statute under the Local Land Charges Act 1975 and the Rules made thereunder. Rule 14 of the 1977 Rules provides that "the fees specified in Schedule 3 shall be payable under the Act and every fee shall be payable in advance". The fee was reviewed less than a year ago, when the Lord Chancellor made the Local Land Charges (Amendment) Rules 2009, SI 2009/2494, which amended Schedule 3 by doubling the statutory fee for a personal search from £11 to £22. It is astonishing that, in making this statutory instrument in September 2009, the Lord Chancellor did not consider the possibility of the incompatibility with the Environmental Information Rules that you have now identified. Further, by making the statutory instrument, the Lord Chancellor led this Council to believe that the fee was lawful.

The appropriate statutory fee has been charged over the years, and the Council is now at a loss to understand how it can now be suggested that the proposed amendment will have a retrospective effect, resulting in a liability on the Council to refund fees that were charged in good faith in reliance on the relevant statutory instrument, which indeed made the fee mandatory. The initial estimate of the cost to this Council of such refunds is £130,000, and this does not take account of the considerable officer time and other incidental costs that would be involved in publicising the availability of refunds and administering repayments.

I should be obliged if you would advise what government funding will be made available for this, given that the Council has relied on a mandatory, statutory basis for the charging of the fee.



It also seems extraordinary that you are not offering any guidance to ensure uniformity in dealing with refunds. The majority of personal searches, as you must be aware, are undertaken by search personal companies, and it would be unrealistic to suppose that they have not recovered their disbursements through the fee charged to their clients.

With regard to the third and fourth paragraphs of your letter, it is of great concern to the Council that guidance on charging for environmental and other property information is not yet available. You have stated that local authorities will continue to be able to make reasonable charges where environmental information is supplied rather than inspected in person. I should be obliged if you would clarify this statement, and advise whether or in what circumstances a charge other than a nominal printing/photocopying charge would be considered reasonable.

I should be obliged if you would let me know also whether any consideration has been or is being given to the lawfulness of the fee for an official search of the local land charges register, also referred to in Schedule 3, and for which the Council is currently empowered to set a fee under the amendments to the Local Land Charges Act 1975 introduced by the Constitutional Reform Act 2005.

Finally, it is noted that no impact assessment has been undertaken to accompany the proposed amendment. You will appreciate that there is an ongoing cost if the Council is to continue to maintain the local land charges register, and I should be obliged for your comments as to how this cost is to be met, especially in the current financial climate, if the Council is to be precluded from recovering its costs through fee income.

I look forward to hearing from you. A copy of this letter is being sent by email to the Ministry of Justice, Department for Communities and the LGA.

Yours sincerely,

A solid black rectangular redaction box covering the signature area.A solid black horizontal redaction bar.

Hope, Valerie (Defra)

From: [redacted]@welhat.gov.uk>
Sent: 02 August 2010 18:16
To: Environmental Information Unit (CIO-KIM)
Subject: Property Searches
Attachments: 20100727_letter_to_CEOs[1].pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hi

We have received the attached letter last week regarding the cessation of fees applied to property searches by person. I know it is a bit early to ask, but can you please indicate to us whether local authorities will be receiving any grants in compensation if we do need to provide a refund to those that have been wrongfully charged to. If so, when we are likely to get it?

Also has any authority raised a question whether we need to adjust our Statement of Accounts in 09/10 to reflect this change - since this is a national issue, has any guidance been sought from CIPFA or the Audit Commission please?

Many thanks.

Regards

[redacted]
[redacted]
[redacted]

Welwyn Hatfield Borough Council

[redacted]

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