

## **Cabinet**

**21 September 2011**

### **Report of Portfolio Holder for Corporate Services & Assets**

#### **Charges for Legal Work**

##### **Purpose**

The Legal and Democratic Services Team currently undertakes a significant amount of legal work at the request of third parties. This service is provided free of charge to those third parties and is run at a cost to the Council.

The purpose of this report is to advise Members of the current position, the nature of the work undertaken and the resource implications. The report will enable Members to consider the options and agree recommendations which will have the following effect :-

1. Provide limited additional income to the Council which can be used to off- set direct cost of providing the particular service requested.
2. Create and implement standard charging for certain areas of legal work.
3. Align our Council's service provision with the approach taken by many other authorities around the country.

##### **Recommendations**

**Members are requested to endorse the content of this report and approve the following:-**

- 1. To approve the general principle of imposing a charge for discretionary legal services.**
- 2. Create a standard form of response to leasehold enquiries and impose standard fees as detailed at appendix 1.**
- 3. To implement standard charges for the areas of legal work in accordance with the schedule at appendix 1 attached to this report**

##### **Resource Implications**

Recommendation number 1 - will allow the Solicitor to the Council & Monitoring Officer to impose a charge when requested to undertake a piece of work not included in the schedule at appendix 1. These charges need to be reasonable and based on a calculation of the cost to the Council providing the service and in the event of any challenge, the Council will have to be able to justify the level of charge.

Recommendation number 2 - there are limited resource implications. Some work will require to be undertaken to create a standard form of response to leasehold enquiries. This can be done by reference to that information required to be provided under Statute and by reference to previous requests, and by using our research of other authorities.

Recommendation number 3 - there are limited resource implications. Third parties will require to be notified upon any request for work to be undertaken, of the standard charge and to collect that fee either prior to or upon completion of the work being undertaken. Research and consideration of the charges has already been calculated at an appropriate fee to ensure that the proposed charge can be justified.

##### **Financial Implications**

There is no specific expenditure required to implement the recommendations.

That said and based upon past enquiry levels, it is estimated that additional income of approx. £4k per annum could be achieved. However, there can be no guarantees of the level of income following the imposition of charges for these areas of work. Although it is highly likely that there will be some income, the numbers of requests do fluctuate and whilst, in most cases, will proceed regardless of the imposition of a charge, the numbers are to a greater extent market driven and cannot be depended upon.

### **Legal/Risk Implications**

Recommendations number 1 and number 3 – the Council does have the power to charge for discretionary service. This power can be found in Section 93 of the Local Government Act 2000. The proposed fees can be justified in terms of the work undertaken.

Recommendation number 2 – the Council is legally obliged to provide certain information to leaseholders under the Housing Act 1985 and this can be done by way of a standard response sheet for which a fee to cover the cost involved can be charged.

### **Background**

General legal work - There are a number of areas of legal work which are undertaken within Legal and Democratic Services, generally at the request of third parties. The schedule at appendix 1 shows a range of tasks. This is not an exclusive list and is purely indicative hence the need for the first recommendation.

This work can take up a substantial amount of Officer time and currently no charges are imposed on the third party making the request.

Much of the work flows from transactions being undertaken by a solicitor on behalf of an individual. For example, when an individual sells their home which was previously a Council house, if there have been any alterations or additions these will have required consent from the Council and frequently, this has not been obtained at the time. There is an urgent need for the consent to enable the sale to progress and the Council is asked to provide retrospective consent to avoid a delay in the sale.

The proposal to implement some standard charges for the provision of certain legal services is in line with the approach taken by other departments across the Council.

Customer Services have adopted standard charges for the provision of photocopying to members of the public at the Tourist Information Centre and Environmental Health have a policy on charging, these charges cover a wide range of services provided by the Environmental Health team.

Provision of Landlord information – replies to leasehold enquiries -

The Council does not currently charge for the provision of information to individuals and their solicitors concerning their lease. The landlord's leasehold enquiries are questions that are sent to the Council in its capacity as the Landlord, when an individual is selling their leasehold property. The questions can range in length from between two and nine pages.

The Housing Act 1985 provides that the freeholder (Council) must give certain information. A reasonable charge can be made for this. The proposal is to create a standard response sheet which will provide all of the statutory information and is sufficient for any sale. It is proposed that a fee is made for this service. See details at appendix 1. However, additional questions may be raised and if so, these will be responded to with an additional fee per question.

The process will improve the speed of response to leasehold enquiries since delays will not be incurred by waiting for Officer time to deal with individual questions. For a set fee a standard response sheet will be immediately sent and this will be quicker than the current process which involves officers in Legal, Housing, Revenues and Property Teams.

## **The Law / Our Powers**

General legal work –

With regard to the proposal for charges for legal work, other than the provision of standard landlord information, these services are discretionary and the Council is not required by statute to provide them.

Section 93 of the Local Government Act 2000 provides local authorities with a statutory power to charge for the provision of discretionary services.

Charges under Section 93 need to be reasonable and based on a calculation of the cost to the Council providing the service and in the event of any challenge, the Council will have to be able to justify the level of charge.

Provision of Landlord information – replies to leasehold enquiries -

The Council is required under the Housing Act 1985 to give the information and this Act does allow the Council to impose a reasonable charge, provided that it can be justified in terms of the officer time taken to deal with the request.

The areas of work for consideration are as follows:-

1. Dealing with a receipt for notices of assignment/transfer/charge which are received when a leasehold property changes hands or is mortgaged. Often the lease will make provision for a set fee to be paid to the Council and this can vary considerably depending on the age of the lease. The fee could be anything between £7.50 and £25 but frequently the lease does not specify a fee.
2. Retrospective consent is required in the event that a previously owned council property with covenants imposed in the deeds which prevent change to that property by way of alterations, building, addition of sheds etc. When an owner comes to sell the property the intended purchaser will require to be satisfied that consent has been obtained from the Council for all such works. The owner is therefore required to contact the Council at that time to seek the consent. This consent is currently provided free of charge.
3. Consent for tree works/removals. Again, this consent will be required because of covenants contained in the original transfer deed on the sale of a right to buy property. Please note that this does not cover tree preservation orders.
4. Letters of postponement. These are required in respect of the Council's statutory discount charge which is registered against a property following a sale on the right to buy scheme. This registered charge protects our position with regards to the repayment required of the statutory discount which has been allowed, within five years of the date of sale. However, the Council is required to postpone that charge in favour of a mortgage taken by the owners of the property in certain circumstances, particularly with regards to home improvement works. The new mortgage company will require their charge to take priority over existing charges on the property title register.
5. Rights of first refusal/certificates of compliance. Again, these are linked to the relevant clauses contained in the original transfer deed on a sale of a 'right to buy property'.
6. General deed related enquiries which are usually with reference to boundary ownership.

A calculation has been undertaken to ascertain the approximate numbers with regard to the areas of work referred to above, which have been carried out within the last two years. The chart below provides these details.

	2010/April 2011	2009/2010
Leasehold Enquiries	42	37
Retrospective Consent	5	7
Tree consents	4	5
Letters of Postponement	3	6

Rights of Refusal/Certificates Compliance	First of 4	6
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### Conclusions

The provision of numerous responses to leasehold enquires at no cost to the individual, takes up valuable officer time and cannot be sustained. A streamlined approach of a standardised form of reply, giving all statutorily required information, at a basic charge to cover the cost to the Council of providing the service together with an option of raising additional enquires for response again, at a basic additional cost, will reduce unnecessary demands on officer time and provide the public with a more efficient service by obtaining the essential information without delay.

It is hoped to improve service delivery by improving efficiency and standardisation of documentation, thus providing the customer with a better service. The level of fees is reasonable and can be justified.

For the discretionary areas of the Council's work it is appropriate that those requiring the service should be responsible for the cost of the same to avoid the burden falling on the wider community. Where statute provides that a reasonable charge may be made, again, it is appropriate that the Council seek to recover the cost of providing the service.

### Report Author

Mary Gallagher - Legal and Democratic Services Manager  
[mary-gallagher@tamworth.gov.uk](mailto:mary-gallagher@tamworth.gov.uk) Tel; 01827 709256

### List of Background papers

Local Government Act 2000  
Housing Act 1985

### Appendices

Appendix I Schedule of proposed charges