

DERBYSHIRE COUNTY COUNCIL

**CABINET MEMBER MEETING – JOBS, ECONOMY AND
TRANSPORT**

11 February 2014

Report of the Strategic Director – Economy, Transport and Environment

**LICENSING THE RE-USE OF HISTORIC ENVIRONMENT
INFORMATION**

(1) **Purpose of the Report** To seek the Cabinet Member's approval to the principle of a system of licensing for the re-use of historic environment information so that a charging schedule and mechanism can be developed for approval at a future Cabinet meeting.

(2) **Information and Analysis** For many years the County Council, in common with most other holders of Historic Environment Records, charged a standard hourly rate for providing information from the Historic Environment Record (HER) for commercial users of the information. These were mainly applicants for planning permission, their archaeological consultants or contractors and privatised utility companies. The information is used in the preparation of Environmental Statements, heritage statements and the production of desk top assessments of the potential impacts of development on archaeological and other heritage remains, and the production of mitigation strategies.

The whole issue of charging for environmental information, which falls under the Environmental Information Regulations 2004 (EIR), is complex. In 2006, the Information Tribunal decided in the 'Markinson case' that charges made by public authorities for providing Environmental Information must be reasonable to the general public as well as to the Authority themselves. The Tribunal also stated that authorities would need strong justification to charge more than 10p per photocopy and that costs associated with the maintenance, identification and retrieval of information could not be charged. On advice from the Director of Legal Services, charging for HER information was discontinued whilst the issue of charging for access to information was reviewed, although some other authorities continue to levy a charge for HER information.

In 2012, the Association of Local Government Archaeological Officers (ALGAO) produced a guidance note on charging for Historic Environment

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services which reviewed the issues around charging for HER information. This advised that whilst the decision in the 'Markinson case' did mean that charging for the provision of HER information was probably not possible under the EIR, the supply of information under EIR does not give the person receiving the information an automatic right to re-use it in a way that would infringe copyright.

Much of the environmental information held by public sector bodies will be covered by copyright under the Copyright, Designs and Patents Act 1988. Although the Act provides for copyrighted material to be re-used for certain purposes eg research, private study and for criticism, review and news reporting, other re-use requires a specific consent of the copyright holder in the form of a licence for which the copyright holder can charge.

The re-use of public information is covered by the re-use of Public Sector Information Regulations 2005 (PSIR). Regulation 15 states the following:

"Charging

15. (1) *A public sector body may charge for allowing re-use.*

(2) *The total income from any charge shall not exceed the sum of -*

(a) the cost of collection, production, reproduction and dissemination of documents; and

(b) a reasonable return on investment.

(3) *Any charges for re-use shall, so far as is reasonably practicable, be calculated –*

(a) in accordance with the accounting principles applicable to the public sector body from time to time; and

(b) on the basis of a reasonable estimate of the demand for documents over the appropriate accounting period.

(4) *A public sector body shall not charge an applicant for costs incurred in respect of activities mentioned under paragraph (2)(a) in respect of a request for re-use, if the same applicant had been charged in respect of those same activities by that public sector body for access to the same document under information access legislation.*

(5) *Where a public sector body charges for re-use, so far as is reasonably practicable, it shall establish standard charges.*

(6) *A public sector body shall specify in writing the basis on which a standard charge has been calculated if requested to do so by an applicant."*

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The Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Re-use of Public Sector Information Regulations 2005 may all apply to HER charging regimes depending on the circumstances.

The ALGAO Guidance states that the legal and policy framework for such charging regimes is complicated and potentially ambiguous but concludes that:

- All the above pieces of legislation expect a local authority to publish a charging policy, unless offering the service for free.
- A general policy of charging for access to HER information is not permissible.
- Charges for photocopying should not normally exceed 10p per copy and staff and other related costs should be excluded from such calculations.
- It may be possible to charge for re-use HER information on the basis of a copyright or database right licence.
- Although widely practised, selective charging for commercial HER access only needs careful justification and may be best linked to licensing through the PSIR which allow for different charging regimes for different types of use.

Currently, two County Councils, Buckinghamshire and Hertfordshire, have adopted the approach of licensing the re-use of heritage data and have clear conditions, charging policies and rates set out on their websites. To date, this approach has not been challenged.

Should the County Council decide to institute a similar process, it will need to establish clear charging policy, including the fees to be charged, which would be published on the Council's website. The Buckinghamshire and Hertfordshire schemes will be used as models for a Derbyshire scheme.

(3) **Financial Considerations** Derbyshire County Council hosts the HER for all of the local planning authorities in Derbyshire. Licensing information from the HER could help offset some of the cost for compiling the information requests and the enhancement of the information on the record.

(4) **Legal Considerations** As contained in the report, there is a case currently before the Information Tribunal concerning charging by local authorities for environmental information which is likely to be referred to the European Court of Justice (ECJ). Charging schemes may have to be reviewed when the ECJ's decision is known.

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In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(5) **Key Decision** No.

(6) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(7) **Background Papers** Advice note on charging and licensing produced by the ALGAO 2012. Officer contact details – Dave Barrett, extension 39774.

(8) **OFFICER'S RECOMMENDATIONS** That the Cabinet Member:

- 8.1 Agrees in principle that the County Council institutes a system of licensing commercial users and other users as appropriate, for the re-use of historic environment information.
- 8.2 Notes that details of the proposed charges and terms and conditions of the HER licensing scheme will be reported to the next Cabinet Member meeting.

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