

TAVISTOCK TOWN COUNCIL

26TH JULY 2016

COUNCIL LETTING POLICY

1. PURPOSE OF REPORT

To provide opportunity for the Council to review, consolidate and codify aspects of existing Letting Policy in respect of commercial premises.

2. CORPORATE POLICY CONSIDERATIONS

The effective management of investment properties, the income/employment they provide and their contribution to the historic street-scene underpin the delivery of the four priorities identified in the Tavistock Town Council Strategic Plan 2010-2015.

3. LEGAL AND RISK MANAGEMENT ISSUES

The Council is subject to a range of statutory and other obligations in the management of its (extensive) investment property holdings. As such it owes various statutory and other duties to tenants, together with a fiduciary duty to local tax payers.

The risks associated with the proposals outlined in this report are primarily:-

- An unduly onerous approach – could lead to an inability to let units to prospective new tenants with a consequential adverse impact upon Council income streams, levels of voids, reputational damage, appearance of the high street and the “let-ability” of premises;
- Too flexible an approach could lead to non-compliance with lease terms, reduction of income and increased potential for legal proceedings;

Clearly understood arrangements for the management of property serve to reduce risk, increase certainty of contract and ensure clarity of roles and responsibilities for landlord and tenant alike.

4. RESOURCE ISSUES

The resource issues arising from this report relate principally to those measures necessary to properly support the sourcing of tenants and management of the lease process from start to finish . However, as Council will be aware, the majority of the provisions outlined are already in situ.

5. COMMUNICATION ISSUES

The content of this report is derived from the decisions of Council previously and reflects the current Council policy position, it is informed by discussions with the Council's Surveyor and Legal Advisors.

6. RECOMMENDATIONS

The Council

- a) affirm the enclosed policy position and endorse the adoption of same as a codified basis, where applicable, for the management of its commercial lease-hold properties;
- b) Endorse and adopt the recommendations included at para's 2.6, 2.9 and 3.3(a).

1. BACKGROUND

- 1.1 The Council will be aware that a number of policy decisions have been taken over the past five years setting out and clarifying various aspects of the operation of the leasehold process for commercial properties in the ownership of the Council. This document sets out to consolidate those proposals and, where appropriate, to introduce improvements and additional safeguards in the interests of an enhanced landlord/tenant relationship.
- 1.2 For clarity this report is intended to cover the relationship of the Council with tenants of its commercial property. As such it will not necessarily reflect the position with regard to residential lettings or those units let for community benefit.
- 1.3 Whilst the policy is not exhaustive it does seek to set out, in particular, some of the more significant aspects of the relationship as between landlord and tenant.

2. THE WAY FORWARD

Professional Advice

- 2.1 The Council subscribes to the view of the Royal Institution of Chartered Surveyors¹ that parties intending to enter into leases should seek early advice from property professionals or lawyers.

Lease Type

- 2.2 It is the policy of the Council to offer new leases on the basis that they are "contracted out" of the Landlord & Tenant Act 1954. The primary affect of this provision being that the tenant does not have

¹ Code of Practice for commercial leases in England and Wales 2002

the benefit of an automatic right to a new lease at the end of the lease term.

Rent Reductions

2.3 There should be no reduction in the rent payable by a lease holder without the specific prior consent of the Council other than in circumstances where a protected tenancy has reached its term and, on the advice of the Council's Surveyor, the current or a higher rental cannot reasonably be achieved in the prevailing market conditions.

Negotiation

2.4 The Council subscribes to the approach that both landlords and tenants should negotiate the terms of a lease openly, constructively and considering each others views².

General

2.5 That:-

- a) All outstanding debts shall be reported to the Council.
- b) Standard lease terms are for upward only rent reviews.
- c) Wherever appropriate (and as circumstances permit) leases shall be produced to a standardised format, the main terms of which may only be varied either with the consent of the Council or to reflect changes in the law and best practice.

Rent Deposit Deeds and Other Safeguards

2.6 The Council will actively promote the use of rent deposit deeds and other safeguards, where supported by professional advice, in order to better protect the interests of the Council as landlord and clearly demonstrate the commitment and viability of the proposals of prospective tenants. These will include, but are not limited to:-

- a) Authorised Guarantee Arrangements (where a landlord can, in certain circumstances, require a tenant to remain contractually liable for the possible default of an assignee after the assignment has taken place for the period that the assignee remains the tenant);
- b) The possibility that a sub-tenancy is agreed, with the consent of the landlord, where an assignment might otherwise not be possible or appropriate so as to ensure that the original tenant retains responsibility for meeting the terms of the lease;
- c) Advanced payment of rent, Director's Guarantees' in the case of Limited Companies, Parent Company Guarantees. For prospective new tenants, the Council requires a satisfactory

² Ibid

bank reference together with, (i.e. those without significant past trading history), a personal guarantee. (Note – the Council also uses the facility to seek Accountants Certificates)

- d) The position as regards tenant surety was further set out for consideration in the report to the Forward Planning, Policy and Programme Sub-Committee at its meeting on 15th February, 2016, in connection with prospective tenants who did not have an asset against which to secure their obligations.

Options which were identified at that time as being potentially available included:-

- Seek a guarantee from a third party.
- Seek a rent deposit (for example one quarter rent in advance in addition to the quarter rent payment in advance under the lease).
- Consider whether or not to offer shorter lease terms as a trial period (notwithstanding that this could discourage some tenants from investing in a new venture³).
- Consider a variation of payment terms (for example instead of requiring payment quarterly, to seek payment on a monthly basis).

In order to address this particular area of concern it is

RECOMMENDED THAT the Council endorse:-

- i) Continuing with the practice of payment being due under new leases on a quarterly basis; but
- ii) Accompanied by a legally enforceable signed letter whereby such new tenants as identified as potentially being at risk pay monthly in advance (such letter specifying how many days in arrears such a tenant shall be before legal proceedings can be commenced).

Good Practice

2.7 As a matter of overall approach and subject to any local variations the Council will have regard to the spirit of the Code of Practice for commercial leases in England and Wales⁴.

Debt Recovery

2.8 The Council is requested to review which of the following approaches it would endorse in relation to debt recovery (note,

³ It is also likely to have the effect of increasing void, professional and associated letting costs which are already rising as lease terms generally reduce

⁴ Code of Practice for commercial leases in England and Wales 2002 (appended)

prospective alternative options to existing arrangements developed from the views of your legal advisors as shown in italics).

- i) Invoicing (currently 14 days before due date) ie no recommended change.
- ii) First letters to tenants regarding arrears (*14/21 days after due date or such period that is stipulated in the lease for the payment of interest*). Currently 30 days.
- iii) Second letter, (*7 days later*). Currently 21 days.
- iv) If no contact has been made or appropriate payment received, the Town Clerk to determine whether enforcement is required (*7 days*) presently a letter is sent after 14 days and action after a further 7.
- v) Where contact is made, authority being delegated to the Town Clerk to have discretion regarding the agreement to instalments or other arrangements.
- vi) All standard letters chasing payments be reviewed to ensure they make it clear tenants should speak to the landlord if there will be difficulties over payment to flag up potential defaults at an early stage.

- 2.9 Reporting to be made to Council when enforcement is required and/or when the arrears are equal to one quarters rent. In order to address this particular area of concern it is:-

RECOMMENDED THAT Council endorse the shortest timeline of those indicated (para 2.8 refers), for each stage in the debt recovery process.

Note – alongside the recommendation at para 2.6 above this provides a robust approach to minimise the potential for loss of public monies whilst affording tenants a clear and fair process for meeting their obligations.

Authorisation

- 2.10 Subject to adherence to the foregoing principles, together with such other policies as the Council may from time to time to determine, the Town Clerk, or in their absence the acting Town Clerk, is duly authorised after having taken professional advice where necessary, to:-

- i) Take such action as is necessary to secure the payment of debts owed to the Council.
- ii) Take such action as is necessary to ensure compliance with the terms, conditions, covenants and other obligations

included in Council leases (following consultation with the Mayor⁵ on any formal proceedings).

- iii) To report on the commencement of any formal proceedings (item ii above refers) to the next meeting of the Council⁶.
- iv) Make arrangements for the letting and recovery of premises.
- v) Determine those factors which may be lease specific, such as renewals, break clauses, rent review provisions, term, etc.
- vi) Make arrangements for the management and maintenance of Council properties within policy and budget.

3. CONCLUSION

- 3.1 As indicated previously in the report of the Councils Solicitor there 'is a necessary balance to be struck as between the rights and responsibilities of landlord and tenant and the maintenance and promotion of a vibrant trading environment'.
- 3.2 The foregoing arrangements represent the outcome of improvements and clarifications made by the Council over the past 5 years. In addition they include improvements as outlined in para's 2.6 and 2.8 if these recommendations are adopted.
- 3.3 Consequential upon these is a material change in practice of which Council will need to be aware. Specifically, subject to the agreement of Council that going forward (and after tenants have been advised of the new policy position) the process for the recovery of debts will commence not at the end of the period to which the debt relates but at the beginning. In the interests of clarity it is therefore:

RECOMMENDED THAT

- a) All tenants be passed a copy of this Policy once adopted and its terms be suitably publicised;
- b) Council agree all new tenants, or tenants renewing leases⁷ be advised on taking on a lease the Council will expect rents to be paid in advance, in accordance with the terms of the lease, (ie the period when the debt recovery process may commence is the due payment date)

⁵ amended to reflect new operating arrangements

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⁷ It is not proposed to backdate this requirement to existing tenants prior to lease renewals to avoid a change in cashflow in difficult economic times. This is also a recognition that the current arrangements have subsisted successfully, and been accepted by both parties - in many instances for a considerable number of years.

- c) The Council review this Policy periodically, commencing with a review after 12 months in operation.

CARL HEARN
TOWN CLERK - JULY 2016

