

Appendix 1

Kirkgate Indoor Market Lettings Policy and Process

1. Introduction

Information about our markets and stalls can be found on our website <http://www.leedsmarkets.co.uk> by telephoning the markets service telephone: 0113 214 5162 or by email: markets@leeds.gov.uk

2. Council Lettings policy

It is the Council's aim to ensure our markets are diverse and meet the needs of Leeds residents and shoppers. It is our policy to deal with all applications in a fair and open way, to ensure our markets are diverse, to ensure that products and services sold comply with trading standards and to make the application process as simple as possible.

2.1 Factors determining the suitability of applications

As is common practice in Local Authority markets, private markets and commercial retail centres, a range of factors governing the quality and mix of products and services on offer in the market are considered when determining applications for a new business, extension to existing businesses, or relocation to another part of the indoor market. The factors considered by LCC Markets Service in determining an application are as follows:-

1. The rental offer where applicable
2. The quality of product/service offered.
3. How the proposed business fits with the objectives of the service, which are set by the Council and align with its Corporate Priorities.
4. Products or services that are currently under represented within the existing market will be encouraged while over-representation will be discouraged;
5. The extent of differentiation – where similar businesses already exist, what is different about the product or service proposed which will enhance the existing offer for customers and increase their choice?
6. The business experience of the applicant, or where a new business, evidence of a sound, well researched and market tested business plan.
7. Level of investment proposed by the incoming tenant, in fit out, branding, marketing, staffing and promotion;
8. Any additional benefits proposed. Examples of this would be Jamie's Ministry of Food which teaches people how to cook and eat healthily, or The Source, which helps new food entrepreneurs market test and develop their business idea.

9. In addition, we look favourably on applications from existing open market traders, or businesses on our start-up schemes, to take permanent units in the indoor market. However, criteria 1 – 8 will still be taken into consideration in determining whether to offer a tenancy as we must also ensure we protect our existing businesses from product or service saturation.

NB. Unlike most commercial leases which may simply state 'A1 use' for example, to denote general retail, Leeds Markets leases contain a detailed user clause setting out *exactly in list form* what goods or services are to be offered on the stall. This is a unique benefit that our tenants champion strenuously as it helps ensure variety and prevent saturation, and it is the user clause which advertised for comment prior to concluding a lease or licence. It is therefore of prime importance that incoming tenants pay attention to this section of the application form.

2.2 The Tenancy Process

There are 3 types of tenancy offered:

- Six month licence with one month's notice to quit
- A periodic tenancy under the Landlord and Tenant Act 1954, which confers rights including compensation, right of assignment and a three month notice period;
- A fixed term lease contracted out of the Landlord and Tenant Act rights.

A prospective tenant may apply for a unit in one of two ways:-

1. On an ad-hoc basis, by identifying the unit they want from the list of advertised vacant units, completing an application form and submitting it for consideration, or
2. By bidding for a unit which has been advertised to let by formal tender (see 3.2)

The criteria for assessment of applications are the same in both cases, and in addition where a unit is tendered, the value of the bid (rent offered) is also taken into consideration. See 4.0 below.

The same criteria are also used in the assessment of applications from existing tenants to extend their user clause (the range of products they can sell), or move to a new location in the market.

The fees charged differ between these categories of application. No fee is payable for a new application (See Annex C).

The method used by LCC Markets Service to assess stall applications covered by the Landlord & Tenant Act 1954 is in line with that used by other Local Authorities.

This document is supported by the following attachments:-

Annex A – Application pack for stall enquiries

Annex B – Tender pack example

Annex C – list of fees.

3.0 RENT, BOND, SERVICE CHARGE AND BUSINESS RATES

When applying for a stall (unit) in the indoor market, applicants must take account of two elements. These are:-

- The cost of the unit, which includes rent, service charge and business rates, plus any bond required;
- The information required by the Markets service to determine whether or not to offer a tenancy.

3.1 Setting base rental levels

The base rental price per square foot of each unit is set by an official rent review, which takes place every three years. The rent review takes into account the levels of rental achieved through tendering of stalls (see 3.2) as well as market forces and the rents previously achieved. For the purpose of this exercise, the indoor market is divided into zones based upon the different halls and prime retail locations within these. The last rent review conducted by the Markets Service was in 2008 and therefore, ordinarily, one would be due in 2011. However, at traders' request an independent review was conducted by the Valuation Office (VO) in 2010 and for this reason one has not been conducted this year.

The rent per square foot is set for each zone and this is the **base rent**. There are a range of discounts or enhancements which are applied to this base rent, for example a fresh produce offer (fruit & veg, flowers, cakes) is discounted in recognition of higher levels of perishable stock; units with an upstairs floor or other storage area are naturally nominally more expensive than ones without this facility. This is advised at the time of application.

After the 2002 rent review, it was agreed to offer some stalls on a 15 year lease contracted out of the protection offered by the Landlord and Tenant Act 1954 (ie. not liable for compensation and not a rolling tenancy). In recognition of this, a range of discounts off the base rent of between 5% and 20% depending on size of unit, were offered. Consequently some contracted out leaseholders will be paying less than their neighbours who have elected to take or remain on periodic tenancies with the protection afforded by the Landlord & Tenant Act 1954. We also currently offer 5 year contracted out

leases for the George St shops and occasionally on other units if requested by the incoming tenant (usually limited companies).

In summary, therefore, the level of base rent for the zone in question, plus any specific discounts or enhancements described above, is the rent at which the lease or licence on that unit is agreed. This information is freely available to applicants.

3.2 Tendering

It has been the policy of the Markets Service to tender all vacant units, *and those occupied on temporary licence*, on a regular basis around 3 times per year. The bids achieved were instrumental in informing the rent review, as mentioned above.

Prior to 2011, new applicants outside the regular tendering process were only offered a temporary licence of six months. For such a new tenant, therefore, it had not been possible to obtain the security of a periodic or contracted out lease other than through successful tender. This was found to be a barrier to more established businesses, or those wishing to invest significantly in their new unit as they had no security other than a six month lease with one month's notice and no guarantee of renewal (or successful tender). Due to the recession affecting the retail sector, the markets service has had to work harder to secure tenants, especially those with established interests elsewhere and the former process has been an additional fetter in achieving this.

Requests to move straight to lease either on commencement of tenancy, or at the end of six months' licence without disruption to business, are now considered on a case by case basis.

Tendering was last undertaken in October 2010 but has been temporarily suspended in 2011 because proposals to determine the optimum size for the market may result in the need to relocate established businesses within the market whilst other areas are redeveloped. It would not be appropriate to tender units externally when existing businesses may be at risk of displacement as a result of redevelopment.

3.3 Rent-free or Assisted Terms

When a tenant takes on a new unit, there is a period where they will be fitting out their stall prior to commencement of trading, during which they are legally liable for rent, rates and service charge but are not actually taking any money. Often, very significant sums are invested by the tenant in the design, fit out and equipment for their unit. It is in the interest of the landlord to encourage tenants to invest in their unit as this enhances the overall offer in the market as well as the individual business. Therefore, by negotiation and agreement between the tenant and the landlord, a rent free period, or a period of time

where rent rises to 100% on a sliding scale, may be agreed if the tenant requests it. It is not routinely offered. This is standard practice between commercial landlords and their tenants, and depends on the level of investment in the unit, the time taken to fit out and establish the business, and also the level of investment the landlord has had to make to accommodate the tenant, for example fitting 3-phase power, additional drainage, or removing walls to combine two units.

Occasionally, tenants may approach the Markets management to ask for temporary assistance with rent; each application is considered individually and any such arrangement is confidential between the landlord and the tenant. The range of assistance available is similar to that offered to new tenants, for example a short period of reduced rent or a longer period of rent reduction on a sliding scale, or a payment plan to clear any rent arrears accrued. The actual terms agreed will depend on the business case for assistance put forward by the applicant, and their ability to pay. The objective of the Markets Service in offering such assistance is to enable tenants with a good track record to continue to trade in the market without getting into financial difficulties.

3.4 The Bond

All new tenancy applications, whether on lease or licence, are subject to the payment of a bond equivalent to one month's full rent. This is held until satisfactory conclusion of the tenancy against damages or non payment of rent or other liability. In certain circumstances, for example where the tenant is a limited company, or where a credit check has raised concerns, the equivalent of two, or very occasionally more, months' rent is required as bond.

3.5 Service Charge

The service charge is the sum payable by tenants for the provision of services by the landlord, incurred by the latter in the management and day to day operation of the premises. It is based upon the *actual cost* of the provision of those services, apportioned between the indoor and outdoor market at Kirkgate as appropriate based upon actual usage. In addition, the landlord, under the terms of the tenancy agreement, makes a small percentage charge of the total as a managing agents' fee. The billing period for service charge is October to September. For the current year the service charge is 11.8% of the base rent. This is collected by the Markets Service. Traders have access to the full detail of what items are coded to the service charge and access to an LCC financial manager for clarification if needed.

3.6 Business Rates

Business rates are set by HM Revenue and Customs based on a percentage of the rental value, and are not collected by the Markets Service. It is the responsibility of the tenant to register for and pay any business rates due.

4.0 THE LETTINGS PROCESS

Every application is discussed with the markets manager (or in the event of her absence, the Head of City Centre and Markets), who takes the final decision whether or not to offer a tenancy, and on what basis. The process of application and negotiation is managed by the commercial development manager with the help of the commercial development assistant. Overall responsibility for the delivery of the commercial lettings service rests with the markets manager.

Applications can be made via a paper form, available from the markets information centre or by post, or via the website www.leedsmarkets.co.uk using downloadable forms. A full information pack accompanies the form; see Annex A. An up to date list of vacant stalls is available from the information centre or as requested from the markets service, and vacant stalls are advertised both in their individual location and via a list in the Information Centre, which is open 0800 to 1800, Monday to Saturday.

When an application is received it is processed as follows:-

1. Paper application assessed by the markets manager and the commercial development manager, using the criteria set out in 2.1 above. If more information is needed, the applicant is contacted by phone to discuss (or in person if already in the market). Once further information has been obtained, the application is reassessed
2. If approved in principle, the user clause (list of goods and services to be offered) and unit number is advertised prominently in the Information Centre to allow comment from other traders, for 7 days. There is no obligation for the landlord to offer the tenancy, at this stage.
3. a) If no comments are received, the application moves to final approval.

b) If comments are received, the application is reassessed, perhaps to obtain more information about the product range or differentiation – at this stage, the applicant may be invited for interview to provide supplementary information in support of their application. Sometimes as a result of this process, the user clause is modified to reduce the likelihood of conflict with existing goods and services before moving to the final approval stage. All comments are replied to in writing.
4. The final decision whether or not to offer and on what basis, taking into account all information obtained and any comments, rests with the markets manager, who has delegated authority under the Council's

constitution.. Once agreed with the markets manager, the commercial development team make the offer to the applicant and begin any negotiations regarding fit out etc. Appropriate checks are carried out before a lease or licence is concluded, and this must be in place, along with the bond payment, before the tenancy can commence.

Leeds City Council Markets Service
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