

Report of Asset Management & Regeneration

Report to the Director of City Development

Date: 8th July 2020

Subject: Rental Arrears – Next Steps

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No City Wide
Has consultation been carried out?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: 10.4 (3) Appendix number: 1	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Summary

1. Main issues

- The council holds an extensive and diverse let estate; some properties are held primarily for income generation whilst others provide wider community benefits.
- Due to the variety within the portfolio, with some tenants being able to access government help and others not, a pragmatic rental recovery plan is now required that both supports the council’s Medium Term Financial Plan yet recognises the difficulties facing tenants.
- A previous shortened version report and DDN was signed by the Chief Officer Asset Management and Regeneration on 23 April 2020. This approved that billing would continue in the prescribed manner to tenants within the Council’s estate but that no recovery action would be taken for a period of 3 months and arrears would be recorded throughout that time. The ability to recover unpaid rents in the future remains, although this is subject to any moratoriums that may be imposed upon landlords in relation to the taking of enforcement action against tenants.
- This shortened version report and accompanying DDN sets out the current position in relation to the current rental arrears and how it has evolved since March 2020 and sets out the next steps.

Recommendations

It is recommended that:

- a) The contents of this report are noted;
- b) The steps for addressing rental arrears as set out in the confidential appendix are agreed and approved with any further measures subject to approvals within the existing schemes of delegation; and
- c) Any tenant located in an operational property that the council has closed and prevented the tenant from accessing/using their premises will be provided with a rent period equivalent to the period of closure.

1. Purpose of this report

1.1 The purpose of this short report is:

- a) to update on the current position of the council's let estate in terms of rental arrears that have accrued; and
- b) to seek approval to the proposed courses of action to deal with the rental arrears as set out in the confidential appendix.

2. Background information

- 2.1 Qube is the software that holds the records for the council's let estate and is the mechanism from which we sends out bills; this does not include residential properties (with the exception of a small number of Estate Shops that have a residential element).
- 2.2 The total rent roll in Qube is £17.8m per annum – this includes all commercial income to all directorates.
- 2.3 Income is demanded and paid on a mix of timescales; some pay in advance and some in arrears. Payments are made monthly, quarterly, half-yearly and annually. Under the lease terms income is due whether demanded or not.
- 2.4 Approaches have already been made to the Land & Property Service in Asset Management & Regeneration from tenants about their ability to pay their rent due to Covid-19.
- 2.5 As part of the work towards producing this report, the view and actions of other major landlords (both public and private) has been sought to ensure a level of consistency; this has been achieved.
- 2.6 Where tenants have indicated that they are or are likely to struggle to pay their rent this needs to be considered alongside the wider financial challenges that the council is facing in terms of loss of income. There has to be balance between the need to treat all tenants on an equitable basis and the fiduciary duty of the Council to act in a way which minimises loss of income to the council in order to support services.
- 2.7 It should be noted again that the position that was promoted and approved in April 2020 was for rental deferment i.e. to recover the rent at a later date in so far as was able. That was the right and proper course of action to follow at that point in time so as not to cause any unintended consequences (such as State Aid impacts) at that early stage.

- 2.8 It should be noted that a decision was taken for the Indoor and Outdoor Markets to offer a variety of rent concessions to their tenants, based upon their ability to trade noting Government restrictions. This was dealt with by way of a separate report under the appropriate delegations for Markets.
- 2.9 Central government has recognised the complexity and challenge created by Covid-19 and has announced a number of measures to assist affected businesses. This includes financial support by way of grants and also the introduction of a moratorium on the ability of landlords of commercial properties to exercise rights of forfeiture due to the non-payment of rent; this will run until at least September 2020. The Government is also encouraging all commercial tenants and landlords to engage with one another as early as possible and come to viable arrangements to resolve these issues.

3. Main issues

- 3.1 The previous report in April 2020 noted that the course of action that was approved then required the next steps to be mapped out. It was important to consider the next steps in terms of the ultimate aim being to minimise the loss of income to the Council - having regard to the tenant's circumstances - whilst protecting the estate and longer term rental income by minimising the number of void properties. This had to be done with accountability and fairness.
- 3.2 Given the unprecedented level of economic impact of Covid-19 the situation is complex and on-going. Government support was generally available to some tenants based on the criteria set by government and covered the initial period of April, May and June 2020. There were also some discretionary grants available. The receipt of any grant will form part of diligence and information gathering where appropriate.
- 3.3 The council's let estate is varied; some tenants will not have been able to trade at all; some may have been able to partially trade; others will have been able to continue to trade as normal.
- 3.4 With this in mind, the first stage is to encourage meaningful communication between the council as landlord and its tenants. In order to stimulate this, a letter will be sent to tenants to request that they make contact in the event that they are in rental arrears or experiencing difficulty in paying.
- 3.5 It is not considered appropriate to send a letter to all tenants on the Qube database (4000+ entries); thus an initial filter needs to take place but with an aim to contact as many as we can.
- 3.6 The first batch of letters to go out will not go to the following tenants:
- Those on peppercorn or very low rents (sub £500 per annum) - owing to the fact that this is largely about potential issues caused to tenants by making rental payments and where there is a low consideration to be paid, it is not considered appropriate in this first batch;
 - Those on annual or 'half-yearly' rental payment patterns (this will remove properties such as sub-stations, allotments, gardens and ground rents where there is unlikely to have been impact on ability to use the property / trade owing to Covid-19 (and rents tend to be low);

- Prime Segment – these are low volume and high value accounts with large companies in situ. They will be dealt with by way of direct officer contact with the relevant accounting personal at the occupier company; and
- Tenants in the markets (indoor and outdoor) - who have already been contacted.

- 3.7 A manual check of the tenants not included in this first batch will be made to check for any inconsistencies or circumstances where it is felt that a letter is needed. Any tenant can make contact at any time in a “business as usual” way to discuss their circumstances should they wish.
- 3.8 Officers who engage with tenants to discuss rents will be provided with guidance so that a consistent approach is taken on timescale for recovery and any forbearance evidenced and offered. In the first instance the desired outcome is to seek an affordable payment plan that repays the outstanding rent amount within the financial Year 2020/2021. If this cannot be achieved then further approvals will be sought within existing schemes of delegation.
- 3.9 It should be noted that any request to vary the rental level amount or time period to pay outside of the current Financial Year will have to be sufficiently evidenced and will be further considered for consistency purposes.
- 3.10 Forbearance evidence is likely but not limited to include:
- Trading evidence.
 - Cost mitigation.
 - Other financial support offered / taken.
- 3.11 It is recognised that there may be instances where the council has let part of an operational property to a third party and where the council has prevented the use of these by its own action i.e. to close the building during the pandemic, the tenant will be provided with rent free occupation for the equivalent period of time.

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.1 The Executive Member for Resources has been briefed on the situation and is supportive of the course of action being proposed. In addition where income flows through to other Departments the Heads of Service in the relevant departments have also been contacted and are supportive.
- 4.1.2 There has been engagement with other large local authorities and landlords the action being promoted here is consistent with this.
- 4.1.3 Legal Services have and continue to provide advice in relation to State aid and public law compliance and are of the view that the action being proposed is compliant with the relevant legislation. As regards State aid, anecdotal evidence has been obtained which indicates that the proposals outlined in this report are consistent with what private sector landlords are doing in relation to their estates – it is therefore likely that what is being proposed will not be seen as State aid. As regards public law, the Council must act in a reasonable, proportionate, rational and equitable manner.
- 4.1.4 Officers from Financial Services have also been consulted and have not raised any objections to the proposals contained in this report.

4.2 Legal implications, access to information, and call-in

- 4.2.1 Under Part 3, Section 3E(g) of the Council's Constitution (Officer Delegation Scheme (Executive Functions)) the Director of City Development has authority to discharge any function of the Executive in relation to Asset Management.
- 4.2.2 The Chief Officer - Asset Management and Regeneration, Head of Asset Management, Head of Land and Property and Deputy Head of Land and Property have authority to take decisions in relation to Asset Management as delegated in the Director of City Development's sub delegation scheme.
- 4.2.3 The proposal constitutes a Significant Operational Decision and is therefore not subject to call in.
- 4.2.4 The information contained in the Appendix attached to this report relates to the financial or business affairs of particular persons, and of the Council. This information is not publicly available from the statutory registers of information kept in respect of certain companies and charities. It is considered that since this information is commercially sensitive and was or will be used as part of negotiations in respect of the leases of Council owned properties, it is not in the public interest to disclose this information at this point in time. Also it is considered that the release of such information would or would be likely to prejudice the Council's commercial interests in relation to other similar transactions of other similar properties about the nature and level of any agreement which may prove acceptable to the parties. It is therefore considered that this element of the report should be treated as exempt under Rule 10.4.3 of the Access to Information Procedure Rules.
- 4.2.5 As regards State aid, anecdotal evidence has been obtained which indicates that the proposals outlined in this report are consistent with what private sector landlords are doing in relation to their estates – it is therefore likely that what is being proposed will not be seen as State aid.
- 4.2.6 As regards public law, the Council must act in a reasonable, proportionate, rational and equitable manner. In addition, the Council must also have regard to its fiduciary duties to the Council Tax and business rate payers of Leeds and must act in a business-like manner. Advice from Legal Services is that the proposals outlined in this report are compliant with these requirements.

4.3 Risk management

- 4.3.1 The risk associated with the proposals are as follows:
- 4.3.2 *Inconsistency* – the estate is varied and the arrears will be dealt with by a number of property managers/ officers. To try to be as consistent as possible, guidance will be set out for officers to follow. In the first instance this will be to seek and agree an affordable payment plan. These will be reported for information purposes only and to evidence the arrangement.
- 4.3.3 *Failure to agree a payment plan* – If an affordable payment plan cannot be agreed, further information will be sought from the tenant and this diligence will be considered on a weekly (or fortnightly) basis with relevant colleagues in accordance with the method set out in the confidential appendix. It is accepted that may not be possible to achieve a solution for each and every tenant which is consistent with arrangements entered into with other tenants but this will be the aim where possible.

4.3.4 *Income loss* – It is considered the Investment income will be impacted over this financial year. Work is currently ongoing to take measures to budget appropriately and the detailed work with tenants will feed into this work.

5. Conclusions

5.1 It is concluded that the course of action as set out in this report is fair and reasonable.

6. Recommendations

It is recommended that:

- a) The contents of this report are noted;
- b) The steps for addressing rental arrears as set out in the confidential appendix are agreed and approved with any further measures subject to approvals within the existing schemes of delegation; and
- c) Any tenant located in an operational property that the council has closed and prevented the tenant from accessing/using their premises will be provided with a rent period equivalent to the period of closure.