



TAVISTOCK TOWN COUNCIL

COUNCIL LETTING POLICY

1. INTRODUCTION

- 1.1 A number of policy decisions have been taken over recent 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 consolidates those proposals and, where appropriate, includes improvements and additional safeguards in the interests of an enhanced landlord/tenant relationship.
- 1.2 For clarity this policy 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. CONSIDERATIONS

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 effect of this provision being that the tenant does not have the benefit of an automatic right to a new lease at the end of the lease term.

Rent Reductions

- 2.3 It is the policy of the Council 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,

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

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 It is the policy of the Council 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 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 for prospective tenants who do not have an asset against which to secure their obligations has previously been reviewed and options which were identified at that time as being potentially available included:-

² Ibid

- 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 venture).
- Consider a variation of payment terms (for example instead of requiring payment quarterly, to seek payment on a monthly basis).

Further to the above the Council has endorsed:-

- 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 Wales³.

Debt Recovery

2.8 With regard to invoicing and the recovery of debts it is the policy of the Council for:-

- i) Invoicing - 14 days before due date;
- ii) that after the due date of rental payment is due and before the stage 1 letter is sent a council officer seeks to make phone contact with the tenant to ascertain if there is any good reason not to have made payment
- iii) First letters to tenants regarding arrears - 14 days after due date (or such period that is stipulated in the lease for the payment of interest).
- iv) Second letter, 7 days after the first letter.
- v) If no contact has been made or appropriate payment received, the Town Clerk to determine whether enforcement is required, a final letter being sent after 7 days and action being commenced after a further period of 7 days.

³ Ibid

- vi) Where contact is made, authority being delegated to the Town Clerk to have discretion regarding the agreement to instalments or other arrangements.
- vii) 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 It is the policy of the Council for reporting to be made to it when enforcement is required and/or when the arrears are equal to one quarters rent.

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 Mayor on any formal proceedings).
- iii) To report on the commencement of any formal proceedings (item ii above refers) to the next meeting of the Council.
- 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. ADDENDUM

3.1 The foregoing policy seeks to outline and establish the '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 Consequential upon the above it shall be the case that:

- a) All tenants be passed a copy of this Policy,
- b) All new tenants, or tenants renewing leases 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)

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