



PR.38 14/15

**Policy and Resources
Committee**

15 January 2015

Lease Management Policy

Report by:

Commercial Director

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Purpose / Summary:

The purpose of this report is to set out the proposed policy for the Council's land and property leasing arrangements.

RECOMMENDATION(S):

- (1) That members approve the lease management policy.**

IMPLICATIONS

Legal: The Lease Management Policy is intended to complement the Council's existing legal and governance framework as set out in the Constitution and Financial/Contract standing orders. All lease arrangements will need to follow the appropriate legal/financial processes in addition to this proposed policy.

Financial: FIN/106/15 There are no direct financial implications arising from this report. As stated above, all land/property transactions (including entering into lease arrangements) are required to follow the Council's existing financial/contract standing orders.

Staffing : There are no direct staffing implications arising from this report.

Equality and Diversity including Human Rights : The proposed Lease Management policy has no direct equality and diversity implications. Each individual land/property transaction would need to consider any equality implications arising from the lease arrangement.

Risk Assessment : Adopting the Lease Management Policy will give the Council a clear framework to follow when entering into lease arrangements. This should help provide assurance that the Council is demonstrating probity, due diligence and strategic alignment in its land/property transactions.

Climate Related Risks and Opportunities : There are no direct climate related risks arising from this report.

Title and Location of any Background Papers used in the preparation of this report:

None

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

1 Background

- 1.1 The challenging financial climate of recent years has resulted in the need to radically realign local public services and finances. Maximising the use and effective management of assets has become even more central to the way local authorities are seeking to deliver services and provide value for money.
- 1.2 The Council recognises that the effective and prudent management of its property portfolio plays a vital and critical role in its wider service delivery objectives, where property supports its staff and customers in direct service delivery and where property can and should support local regeneration and, where appropriate, deliver robust and valuable investment income.

2 Lease Management Policy

- 2.1 The application of sound commercial principles and best practice should underpin the Council's approach to estate management and support its vision of an *'Entrepreneurial Council'*. The proposed Lease Management Policy (Appendix 1) sets out a strategic and operational framework to guide both the Council's lease management activity and negotiations for new/extended lease arrangements.
- 2.2 The Policy is based on existing best practice developed by the Royal Institute of Chartered Surveyors (RICS). Appendix 2 provides a guidance note for officers based on recommendations for lease management developed by RICS.
- 2.3 The policy will be reviewed annually to ensure it remains fit-for-purpose and that it guides effectively the Council's approach to asset management.

3 Conclusions

- 3.1 The Lease Management Policy should strengthen the Council's approach to asset management. It is recommended, therefore, that Members agree to adopt the policy set out in Appendix 1.

WEST LINDSEY DISTRICT COUNCIL

LEASE MANAGEMENT

POLICY and PROCESS

2014 – 2018

Application:

Applies to commercial property lettings only, [operational and investment]

Applies to both landlord and tenant interests.

Specifically, does not apply to residential lettings.

The following Policy & Management Approach is based on;

- A. RICS 'Code of Best Practice for Commercial Leases for England & Wales' second edition 2002
- B. Code for Leasing Business Premises in England and Wales, 2007.

Effective date October 2014

Revision date October 2015

INTRODUCTION

The following policy comprises two sections, section one, introducing the strategic element of policy with section two, identifying an operational approach.

The management of leasehold interests in commercial property, whether as tenant or landlord, has both an operational and strategic impact on the performance of the asset/investment and as such, a practical framework, and commitment to that framework, is essential.

Strategically, and importantly for West Lindsey District Council, the authority must have in place an approach to the management of its physical (tenanted, income generating) assets which is robust and drives the performance of the investment.

Operationally, the RICS and UK business community in general have developed a practical 'model' approach to everyday lease management supported by a model heads of terms.

Throughout its lease management activity, WLDC will follow operational best practice and adopt the model heads of terms insofar as practical and insofar as they support the 'Corporate' objectives of the authority.

The approach will be applied to direct lease management activity & operations and to negotiations carried out by its principal (commercial surveying) service provider.

The essential elements of best [operational] practice covers 23 subject areas, some of which can be considered as strategic in their wider application.

The use and application of the 'model heads of terms' will be followed as they;

- Provide consistency in approach
- Provide clear lines of audit
- Highlight levels of risk awareness and avoidance
- Deliver reduction in costs [management time; research time; reproduction; visibility of content]

STRATEGIC APPROACH & POLICY

The following principles should be considered as central to the effective and strategic approach to the management of leasehold interests, from negotiation, term management and end of lease. The principles apply to the authority as both a landlord (investor) and tenant (of operational property).

The basic premise for lease management and the strategic approach will be;

For investment property

Supported by the councils agreed 'Investment Policy' and aligning with the 'Corporate Strategy' to procure leasehold investment opportunities and manage these in such a way so as to support robust revenue streams and positive capital appreciation.

To create positive relationships with tenants, identifying their business needs and delivering leasehold premises which support commercial activity within the council's administrative area and deliver market rental yields.

For operational property

Procure the most appropriate short; medium or long term interest [as a flexible alternative to ownership] which demonstrates value for money, and manage those interests in full and strict accordance with the lease terms and conditions and so protect the interest of the authority.

1. Principal Approach

For all elements of leasehold acquisition and management, the council will follow and apply the appropriate and current codes of practice for effective management of the interest, whether acting as landlord or tenant. In all cases, the executive and officers of the authority will secure professional [internal or external] expert advice and opinion in respect of;

- Length of lease and rental levels
- Anticipated capital value
- Specific content of the lease and the financial impact of obligations
- Availability of potential exit strategies (for landlord or tenant) and their potential impact on the value of the interest

2. Investment and Operational Interests [cost & returns]

The acquisition and management of leasehold interests, whether for direct (or indirect) occupation by the council or for investment, will follow the appropriate and relevant processes and directives as outlined in the councils 'Investment Policy'. Interests acquired for investment purposes must satisfy identified; pre-determined rates of return and, in the absence of special directives, deliver full market rent.

In procuring and thereafter managing leasehold (investment) interests, the council will always (unless special directives apply) seek to secure full market rental levels.

Special directives may apply where the authority supports 'third sector' activity and levels of relief against market rent are agreed in the form of a subsidy.

Institutional form of leases will sought where ever practical and appropriate.

3. Relationships

The authority will as a matter of policy, and particularly in its capacity as landlord (immediate and/or reversionary), conduct leasehold management and negotiations fairly, be explicit in its requirements and clearly identify its required parameters of operation, expectation and charges. Financial information will be kept confidential unless already publically available or there is proper need for disclosure.

4. Risk Considerations

The council will make every effort to mitigate elements of risk to its investment (either as landlord or tenant) by;

- Ensuring adequate insurance is in place in respect of buildings, fixtures & fittings and [for investment assets] loss of rental income (in the event of the loss of the property)
- Ensuring tenant compliance in respect of tenant obligations and taking immediate action where non-compliance is observed
- As a tenant, ensuring that it complies with landlord requirements and tenant obligations. Schedules of requirements and works will be identified and attached to lease management systems to prompt and enable compliance
- Business continuity and crisis/incident management plans will be in place to support management activity and protect investment property & income.
- All prospective tenants of the council will be subject to financial checks.

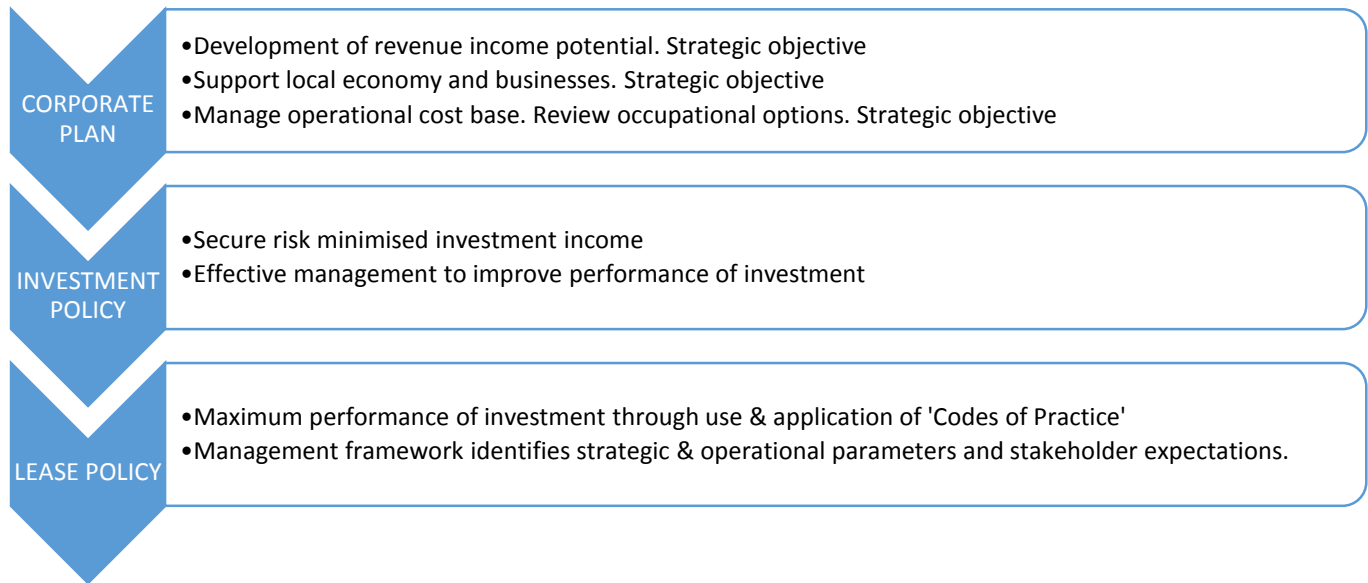
5. Landlord and Tenant Act 1954

The authority will give due and careful consideration to the application of the Landlord and Tenant Act 1954, specifically where requests are received for 'contracting out' of the legislation. The full impact of contracting out of the terms of the act will be discussed by the authority and its advisors [on a property by property basis] and an impact report delivered.

6. System Management

The authority will utilise management systems and processes to ensure accurate recording and reporting of information, programme key events and ensure that opportunities for asset improvement and performance are not missed.

Lease Management Structure



OPERATIONAL MANAGEMENT POLICY

The operational management of leasehold investments and interests within the council's management system will follow (where ever practical) the terms of 'Industry Best Practice' and ensure that operational management aligns with, and fully supports, strategic objectives.

A complete list of principal 'Management Elements' as adopted by the RICS is re-printed in appendix one to this policy as is a summary of the 'Model Heads of Terms' [for negotiation] as proposed by UK industry.

The principal operational elements to lease negotiation and management are :-

1. Negotiations.

For the sake of clarity; expediency and the avoidance of doubt, the council will, when negotiating new leases and/or other leasehold contractual matters clearly communicate and document all requirements and terms. As negotiations proceed, changes and amendments will be documented. This will include;

- Rent levels
- Length of term and any rights to break the lease
- Relevance of the Landlord and Tenant Acts and security of tenure
- Rent review and outline mechanism
- Rights to assign; sub-let or otherwise part with possession of the premises
- Repairing obligations
- VAT status

During negotiations, the authority may wish to identify *alternative* rental options or, as tenants themselves, seek alternative terms with associated rent options. All alternatives considered must, within the context of the agreement, preserve and represent 'Best Value'.

The essence of negotiations must be to secure an agreement which satisfies both parties.

2. Break clauses & Rights to Renew

In order to support the model clauses and tenant occupational flexibility, the council will consider the inclusion of a break clause(s) within the lease agreement. Consideration must however be given to the impact which breaks may have on the security of income and may impact on the rental figure agreed or sought.

In exercising the right to break, the tenant should be expected to be in full compliance with all the terms; conditions and obligations in the lease at;

- The time the request is made, and
- Actual termination

This requirement should be clearly stated in the lease.

Rights to re-new are central to the Landlord and tenant Act 1954.

3. Financial; Guarantees and Deposits

It is the general policy of the council to secure financial information in respect of all new tenants and secure guarantees and deposits.

The heads of terms will clearly state the quantum of the deposit along with the council's policy for holding monies, the rate of interest accruing and the process for release.

4. Service Charges and Insurance

The authority will, within the heads of terms, identify elements of and provide best estimate for service charge payments and any other outgoings for which the tenant will be liable.

The authority will follow the RICS approved 'Code of Practice' for service charges in commercial leases.

The authority will require the leased building to be fully insured against standard institutional risks.

Where the tenant requests that he insures, the policy must be agreed with the authority prior to the tenancy.

In all other cases, the authority will insure and re-charge.

Where premises are destroyed by an uninsured risk, the tenant will have the right to terminate the agreement immediately unless suitable alternative premises can be made available.

5. Rent Review

All leases will be subject to rent review. All rent reviews will be assessed on the basis of full rack rent as assessed by the council's appointed surveyors.

6. Assignment and Subletting

The tenant's ability to assign or sublet will be considered as appropriate to the length of the lease granted, user and general terms within the lease.

7. Repairs

Prior to the letting, it will be the council's policy to agree with the tenant, the condition of the property and its state of repair. A schedule of conditions on entry will be agreed by both parties.

A schedule of dilapidations will be prepared by the authority at the end of the lease. The element of policy will apply to all leases.

In all cases the 'day to day' repairing obligations on the tenant will be appropriate to the length of the lease.

8. Alterations and Change of Use

The control over alterations and change of use should not be more restrictive than is necessary to '**Protect the Value**' at the time of the application, of the premises and any of the council's adjoining interests.

Where deemed appropriate, the council may require the premises be re-instated at the end of the lease.

End

GUIDANCE NOTE

Royal Institution of Chartered Surveyors

Code of Practice for Commercial Leases in England and Wales

2002

The following recommendations are extracted from the RICS Code of Practice for commercial leases. The full code should be referenced where further detail is required. The following represents a summary of the elements to consider but may act as a check box exercise when initially considering the option to lease.

Recommendation 1; Renting premises: Both landlords and tenants should negotiate the terms of a lease openly, constructively and considering each other's views.

Recommendation 2; Obtaining professional advice: Parties intending to enter into leases should seek early advice from property professionals or lawyers.

Recommendation 3; Financial matters: Landlords should provide estimates of any service charges and other outgoings in addition to the rent. Parties should be open about their financial standing to each other, on the understanding that information provided will be kept confidential unless already publicly available or there is proper need for disclosure. The terms on which any cash deposit is to be held should be agreed and documented. NB WLDC will undertake credit reference checks prior to issuing a lease and reserves the right to undertake credit reference checks at rent reviews.

Recommendation 4; Duration of lease: Landlords should consider offering tenants a choice of length of term, including break clauses where appropriate and with or without the protection of the Landlord and Tenant Act 1954. Those funding property should make every effort to avoid imposing restrictions on the length of lease that landlords, developers and/or investors may offer.

Recommendation 5; Rent and value added tax: Where alternative lease terms are offered, different rents should be appropriately priced for each set of terms. The landlord should disclose the VAT status of the property and the tenant should take professional advice as to whether any VAT charged on rent and other charges is recoverable.

Recommendation 6; Rent Review: The basis of rent review should generally be to open market rent. Wherever possible, landlords should offer alternatives which are priced on a risk-adjusted basis, including alternatives to upwards only rent reviews; these might include up/down reviews to open market rent with a minimum of the initial rent, or another basis such as annual indexation. Those funding property should make every effort to avoid imposing restrictions on the type of rent review that landlords, developers and/or investors may offer.

Recommendation 7; Repairs and services: The tenant's repairing obligations, and any repair costs included in service charges, should be appropriate to the length of the term and the condition and age of the property at the start of the lease. Where appropriate the landlord should consider appropriately priced alt

Recommendation 8; Insurance: Where the landlord is responsible for insuring the property, the policy terms should be competitive. The tenant of an entire building should, in appropriate cases, be given the opportunity to influence the choice of insurer. If the premises are so damaged by an uninsured risk as to prevent occupation, the tenant should be allowed to terminate the lease unless the landlord agrees to rebuild at his own cost.

Recommendation 9; Assigning and subletting: Unless the particular circumstances of the letting justify greater control, the only restriction on assignment of the whole premises should be obtaining the landlord's consent which is not to be unreasonably withheld. Landlords are urged to consider requiring Authorised Guarantee Agreements only where the assignee is of lower financial standing than the assignor at the date of the assignment.

Recommendation 10; Alterations and changes of use: Landlord's control over alterations and changes of use should not be more restrictive than is necessary to protect the value of the premises and any adjoining or neighbouring premises of the landlord. At the end of the lease the tenant should not be required to remove and make good permitted alterations unless this is reasonably required.

Recommendation 11; On-going relationship: Landlords and tenants should deal with each other constructively, courteously, openly and honestly throughout the term of the lease and carry out their respective obligations fully and on time. If either party faces a difficulty in carrying out any obligations under the lease, the other should be told without undue delay so that the possibility of agreement on how to deal with the problem may be explored. When either party proposes to take any action which is likely to have significant consequences for the other, the party proposing the action, when it becomes appropriate to do so, should notify the other without undue delay.

Recommendation 12; Request for consents: When seeking a consent from the landlord, the tenant should supply full information about his/her proposal. The landlord should respond without undue delay and should where practicable give the tenant an estimate of the costs that the tenant will have to pay. The landlord should ensure that the request is passed promptly to any superior landlord or mortgagee whose agreement is needed and should give details to the tenant so that any problems can be speedily resolved.

Recommendation 13; Rent review negotiation: Landlords and tenants should ensure that they understand the basis upon which rent may be reviewed and the procedure to be followed, including the existence of any strict time limits which could create pitfalls. They should obtain professional advice on these matters well before the review date and also immediately upon receiving (and before responding to) any notice or correspondence on the matter from the other party or his/her agent.

Recommendation 14; Insurance: Where the landlord has arranged insurance, the terms should be made known to the tenant and any interest of the tenant covered by the policy. Any material change in the insurance should be notified to the tenant. Tenant's should consider taking out their own insurance against loss or damage to contents and their business (loss of profits etc.) and any other risks not covered by the landlord's policy.

Recommendation 15; Varying the lease – effect on guarantors: Landlords and tenants should seek the agreement of any guarantors to proposed material changes to the terms of the lease, or even minor changes which could increase the guarantor’s liability.

Recommendation 16; Holding former tenants and their guarantors liable: When previous tenants or their guarantors are liable to a landlord for defaults by the current tenant, landlords should notify them before the current tenant accumulates excessive liabilities. All defaults should be handled with speed and landlords should seek to assist the tenant and guarantor in minimising losses. An assignor who wishes to remain informed of the outcome of rent reviews should keep in touch with the landlord and the landlord should provide the information. Assignors should take professional advice on what methods are open to them to minimise their losses caused by defaults by the current occupier.

Recommendation 17; Release of landlord on sale of property: Landlords who sell their interest in premises should take legal advice about ending their ongoing liability under the relevant leases.

Recommendation 18; Repairs: Tenants should take the advice of a property professional about their repairing obligations near the end of the term of the lease and also immediately upon receiving a notice to repair or a schedule of dilapidations.

Recommendation 19; Business Rates: Tenants or other ratepayers should consider if their business rates assessment is correct or whether they need to make an appeal. They should refer to the DTLR Business Rates-a Guide or obtain advice from a rating specialist. The RICS provides a free rating help line service (see below) and advice is available also from the Institute of Revenues Rating and Valuation (IRRV).

Recommendation 20; Service charges: Landlords should observe the Guide to Good Practice on Service Charges in Commercial Properties. Tenants should familiarise themselves with that Guide and should take professional advice if they think they are being asked to pay excessive service charges.

Recommendation 21; Dispute resolution: When disputes arise, the parties should make prompt and reasonable efforts to settle them by agreement. Where disputes cannot be settled by agreement, both sides should always consider speed and economy when selecting a method of dispute resolution. Mediation may be appropriate before embarking on more formal procedures.

Recommendation 22; Repossession by the landlord: Tenants threatened with repossession or whose property has been repossessed will need professional advice if they wish to try to keep or regain possession. Similarly, landlords should be clear about their rights before attempting to operate a forfeiture clause and may need professional advice.

Recommendation 23; Renewals under the Landlord and Tenant Act 1954: The parties should take professional advice on the Landlord and Tenant Act 1954 and the PACT (Professional Arbitration on Court Terms) scheme at least six months before the end of the term of the lease and also immediately upon receiving any notice under the Act from the other party or their agent. Guidance on the Act can be found in the Department for Transport, Local Government and the Region’s “Guide to the Landlord and Tenant Act 1954”.

Reproduced and from RICS Code of Practice for Commercial Leases. [Amended by G W Gate]

End