



WEST OXFORDSHIRE
DISTRICT COUNCIL

WEST OXFORDSHIRE DISTRICT COUNCIL

Name and date of Committee	CABINET – 16 June 2021
Report Number	Agenda Item
Subject	Commercial Tenancy Arrears Review
Wards affected	All
Accountable member	Councillor Suzi Coul Cabinet Member for Finance Email: suzi.coul@westoxon.gov.uk
Accountable officer	Jasmine McWilliams Asset Manager Tel: 01285 623255 Email: jasmine.mcwilliams@publicagroup.uk Suzanne Barton Senior Estates Officer Tel: 01285 623245 Email Suzanne.barton@publicagroup.uk
Summary/Purpose	For Cabinet to consider the commercial tenancy arrears position in light of the statutory limitation on recovery action against tenants.
Annexes	Annex A – Covid Business Support Terms March 2020 Annex B – Criteria for Further Commercial Tenant Support
Recommendation/s	a) <i>That Cabinet notes the arrears position on the commercial portfolio;</i> b) <i>That Cabinet grants delegated authority to the Cabinet Member for Finance to utilise the tools set out in section 3 on a case by case basis to protect the commercial interests of the Council.</i>
Corporate priorities	A Vibrant District Economy: Securing future economic success through supporting existing local businesses and attracting new businesses to deliver the economic ambitions of the Local Industrial Strategy Modern Council Services and Sustainable Finance: Delivering excellent modern services whilst ensuring the financial sustainability of the Council
Key Decision	Yes
Exempt	No
Consultees	Senior Officers and Cabinet Members

I. BACKGROUND

- 1.1 In response to the Covid-19 crisis, in March 2020, the Council issued Business Support Terms to its commercial tenants. The Terms, attached at Annex A, allowed all commercial tenants (except those able to continue to trade, headlessees and Government organisations) a 3 month rent deferral.
- 1.2 In August 2020 the Council decided to extend the rent deferral for a further 3 months for only those tenants that were still unable to trade. The decision included the offer to tenants to enter into a monthly payment plan for the deferred rent. The aim being to bring their rent accounts up to date by the end of March 2022, or the end of lease, whichever occurs first.
- 1.3 The CIPFA Asset Management Team monitored English and Welsh authority responses to the Covid-19 pandemic in respect of their commercial tenants. The Team have advised the following:
 1. Most Councils have given a 3 months' deferment with some offering longer periods;
 2. Most Councils have refused rent free period requests except where the tenants are within buildings owned by the Council that have had to be closed e.g. leisure centres;
 3. Most Councils did not proactively offer support to tenants (they waited for tenants to contact them);
 4. Most Councils have dealt with tenants on a case by case basis or by sector;
 5. Most Councils have suspended debt recovery with the timing of reinstatement to be determined;
 6. Some Councils are offering rent free periods to specific types of tenants or on a case by case basis.

2. MAIN POINTS

- 2.1 Some commercial tenants have contacted the Council, as a result of the deferred rent and payment plan discussions requesting further support . The Council is not obligated to grant any further support but may wish to consider adjusting the arrears position if it is in the commercial interest of the Council.
- 2.2 The draft Policy at Annex B, is intended to provide a policy for both the November 2020 trading restrictions and the further trading restrictions implemented by the Government at the end of December 2020 as a result of the response to Covid-19.
- 2.3 The current arrears position is in the order of £1m against annual income of £3m - an average therefore of around 4 months.

3. FINANCIAL IMPLICATIONS

- 3.1 Over the last decade or so the Council has moved a significant proportion of its cash reserves into property assets that have delivered a return many times greater than available in the money markets. The performance of the property portfolio is reviewed annually by the Finance and Management Overview and Scrutiny Committee. The average performance of the portfolio over the last decade is in excess of 7% excluding any capital appreciation.
- 3.2 The rental stream from the assets has been fundamental in allowing the Council to meet its strategic objectives over that period including maintaining service delivery levels, levying a low Council Tax to residents and keeping key policy objectives in place such as free car parking.

3.3 Given the importance of the rental stream to the Council's Medium Term Financial Strategy it is important that any decisions on rent arrears take account of the commercial objectives of protecting the rental income over both the short and medium term and also avoiding voids. This should be the key criteria in determining any arrears adjustments. The following paragraphs outline the financial implications of a number of policy choices that impact on the finances of the Council in this regard.

Rent Deferrals

- 3.4 Rent deferrals will not impact the Council's revenue budget as the rent will remain due from tenants and will be recognised as a debtor in the financial year-end statements. There will be a small impact upon the Council's cash flow and a reduction in investment income. However, with interest rates on cash deposits of less than 0.1%, the financial impact of rent deferrals will be insignificant on the Council whilst being of significant benefit to businesses who would pay significantly higher interest charges to their bank or other funders.
- 3.5 There remains a risk that rent deferrals will ultimately lead to rental loss if businesses are unsuccessful in recovering from the pandemic and this impact will be felt in the revenue account via bad debt provisioning.

Lease Re-gear

- 3.6 Often carried out by statutory means such as Company Voluntary Arrangements (CVA) lease re-gears are often used to amend lease terms when they are deemed to be unaffordable. Outside of CVA's it is possible to utilise such tools to assist businesses by reducing their arrears in exchange for the removal of the option to break or to extend the lease period thereby providing more long term stability for the landlord. For example a one month rent free period has recently been negotiated at Units 9 & 10 Talisman Business Centre in exchange for the removal of the option to break thereby reducing risk and delivering longer term certainty.
- 3.7 The type of lease re-gear is dependent on individual lease terms and is subsequently case dependent. There could be a short term impact on the Council's income in exchange for a longer period of rent security for the Council.

Rent Free Period

- 3.8 A rent free period without any lease adjustments would impact the Council's commercial income without the opportunity to gain longer term security of tenure and is therefore is only recommended in exceptional circumstances.

4. LEGAL IMPLICATIONS

- 4.1 The Council has no obligation to take any action and under leases, it is the tenants responsibility to ensure they have any appropriate business continuity insurance. However the Council may wish to assist its commercial tenants to support them through these unprecedented times, whilst seeking to preserve its future rental income and support the local economy.
- 4.2 The government has recently updated its legislation to remove the landlord's right of forfeiture in respect of unpaid rent now until 30th June 2021 which effectively prevents landlords taking any action until then.
- 4.3 A Code of Conduct has been provided which advises that where the tenant is able to, it should pay full rent. The Code puts the onus on the tenant to contact the Landlord with sufficient information to show that their business has been affected in such a way that the Landlord should provide support. The Council is under no obligation to provide any rent free periods or further deferment but is encouraged by the Code to enter discussions with its tenants.
- 4.4 A recent High Court Decision ref EWHC1013 Cineworld and Others decided that tenants had to pay rent regardless of the impact of the pandemic.
- 4.5 Legal Services will provide any necessary formal agreements with tenants reflecting any agreement made under the further support for commercial tenants..

5. RISK ASSESSMENT

- 5.1 There is a general economic risk to the Council's income from commercial tenants defaulting or going into administration. By approving the further support for commercial tenants, officers can protect the Council's commercial rent income in an equitable manner.
- 5.2 Due to current market uncertainty, should any of the Council's commercial premises become vacant due to business tenants going into administration, it is anticipated that the premises could remain vacant for a significant period of time. During this period, the Council would be responsible for any costs of void properties including business rates, repairs and maintenance, insurance and security.

6. ALTERNATIVE OPTIONS

- 6.1 The Council could provide no further support over and above the previously agreed rent deferrals.
- 6.2 The risk of the alternative option is the increased potential for reduced future income if the tenants are unable to make rent payments.

7. BACKGROUND PAPERS

None



**COMMERCIAL TENANTS - RENT
SUPPORT OF COUNCIL TENANTS DURING COVID-19 PANDEMIC**

Commercial rent support

In support of Council tenants' cash flow issues during the COVID 19 pandemic the Council has agreed to the following actions:

1. All rental invoices to be sent out in line with the lease requirements.
2. All tenants, with the exception of those listed at Annex A, now referred to as 'Qualifying Tenants', are entitled to the following deferment of rent:
 - a. The Council will not take any action for non-payment of rent during the period 25th March 2020 – 24th June 2020 for tenants on quarterly billing arrangements;
 - b. The Council will not take any action for non-payment of rent during the period 1st March 2020 to 30th June 2020 for tenants on monthly/ weekly/ other billing periods

Thus providing deferment of rent payments during this period. However, all rents will remain due in line with the lease.

3. Qualifying Tenants can continue paying rent if they prefer and can now pay on a monthly in advance basis rather than quarterly in advance payments to support any cash flow issues.
4. Qualifying Tenants with a rent review which is currently outstanding or is due to commence prior to 30th September 2020 to be advised that these will be put on hold. After this date all rent reviews will be progressed in line with the terms of the lease.
5. All tenants should seek a claim under their insurance for business continuity for any costs, including rent, associated with the effect on their business due to the Covid-19 pandemic.
6. All tenants should refer to support available to businesses via the government website and are expected to seek all government support available to them
<https://www.businesssupport.gov.uk/coronavirus-business-support/>
7. Any queries please contact estates@publicagroup.uk

ANNEX A – list of excluded tenants

The following tenancies are exempt from this deferment of rent:

- Residential
- cultivation
- play areas
- grazing
- contractor leases – leisure/waste etc
- other non- business tenancies/ licences
- leases to Government Organisations



COMMERCIAL TENANTS - RENT

FURTHER SUPPORT OF COUNCIL TENANTS DURING COVID-19 PANDEMIC

JUNE 2020

Commercial rent support

To protect the Council's commercial property portfolio and supporting its commercial tenant during the Covid-19 pandemic the Council has decided that the following criteria must be met in order to agree to any requests for

- further rent deferrals
- lease regear or
- rent free period

1. Supporting Accounts

Tenants must provide a full proposal outlining current circumstances and supporting accounts showing that further support is required to enable the continued operation of business and their ability to pay future rent

2. Unable to Trade

Tenants must have been unable to trade or had significant reduction in trade due to Government response to Covid-19.

3. Government Covid-19 Grants

Tenants must have applied for all appropriate Government grants and must provide evidence of the value of grant received. The tenant must show how this grant is utilised.

4. Business Rates Relief

Tenants must have applied for all relevant business rates reliefs and must provide evidence of the value of any relief awarded.

5. Government Covid-19 Support

Tenants must have applied for all relevant Government financial support. The Council's website provides information on the various forms of support available.

Tenants must provide evidence of Government Covid-19 support and show how this has been utilised.

7. Level of Risk

The following circumstances will be investigated against the suitability and risk of a further support in terms of the following:-

- lease length
- tenants ability to pay
- tenants status (individual/limited company)

Where there is a significant risk of the tenant defaulting on rent repayments in the future, the Council's Estates team may refer the request for a rent deferral to the Council's Chief Finance Officer for a decision.

I. Exclusions

The following tenancies are exempt from this deferment of rent:

- ground leases
- retail tenants who remain operational
- residential
- cultivation
- play areas
- grazing
- contractor leases – leisure/waste etc
- other non- business tenancies/ licences
- leases to Government organisations