



North
Northamptonshire
Council

Corporate Property Leasehold Policy

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1.0 Introduction / foreword

- 1.1 This policy applies to the leasehold management for corporate property owned or leased by North Northamptonshire Council.
- 1.2 It sets out the procedures and processes that the Council must follow to ensure there is adequate governance to mitigate risks associated with leasing property it owns to third parties or taking on leasehold interests. Following an Asset Management audit, the following action was noted by the auditor as a means of managing such risk:
- To protect the Council and support the Service Areas, the policies should outline how the Asset Management Team need to be involved in every potential agreement made in respect of leased assets or other tenancy agreements, for example, mandatory attendance of the Service Areas to an Asset Management working group, prior to these agreements being signed off by the delegation as outlined in the Constitution.*
- 1.3 As such, the process detailed in this policy aims to support existing governance arrangements, but also ensure that all leases are negotiated through the Asset Management team, who will provide technical advice, to support informed decision making. This will ensure all lease negotiations comply with statutory requirements, reflect best consideration, and are on terms that deliver the Council's Corporate Plan.
- 1.4 The Asset Management team are required to hold a land and property asset register, which includes maintaining a list of current lettings. This information is used by valuers to undertake the annual asset valuations, which in turn forms part of the annual accounting policy. Accordingly, it is critical all leasehold interests are managed and recorded centrally.
- 1.5 This policy forms a suite of asset management policies including the Community Asset Transfer Policy and the Asset Disposal Policy, which will provide a framework for the Council's Asset Strategy and support the Council in transitioning to a Corporate Landlord model.

2.0 Scope

- 2.1 This policy applies to all land and buildings within the Council General Fund ownership, which covers the following criteria outlined below.
- 2.1.1 All service area property requirements including:
- Sports and wellbeing - Community Halls, Public Opens spaces, Leisure and Sports Centres, pocket parks, libraries.
 - Civic and Ceremonial - civic halls, registrars, memorials.

- Non-Housing Revenue Account Residential accommodation - traveller sites held by the general fund.
- Social Care - accommodation for the Northamptonshire Children's Trust and Adult Social Care.
- Economic development and regeneration projects - business centres, build leases.
- Infrastructure – unadopted roads, paths.
- Operational premises – depots, recycling centres.
- Commercial units – to earn income to support the finances of the Council

2.1.2 All lease lengths, from a short licence to occupy Council land, to long leaseholds of many years.

2.1.3 All service projects that include funding and service level agreements, which involve Council owned property being controlled by and in exclusive possession of a third party, or the Council taking on additional land & buildings via a leasehold interest.

2.1.4 All types of legal interests in land including periodic tenancies, leases, licences, easements, wayleaves, conditional contracts (e.g., agreements to lease).

2.2 This policy does not apply to:

- Ad hoc hiring of premises or land where exclusive possession is not granted
- Land and Buildings forming the Housing Revenue Account e.g. Social housing, and estates paths associated with a Housing Estate.

3.0 Policy outcomes

3.1 The outcome of this policy is to ensure that there is a consistent, transparent and coordinated approach to lease negotiations, processed by the Asset Management team, who will lead lease negotiations and advise the Service Area on the best terms for each lease to achieve their aims.

3.2 The Lettings Policy will also ensure that the Council follows due process in relation to achieving best consideration for its assets, as required under Section 123 of the Local Government Act 1972 and is cognisant of the risks associated with lease transactions before committing to them formally.

4.0 Corporate Property Leasehold Policy

4.1 The Council owns a large portfolio of property which is currently managed by different Services, although the Council is working towards a corporate landlord model. Much of this land and property is used under formal agreements, such as leases, licences, wayleaves, etc., by third parties. There are also instances where the Council leases in third party owned property, for service delivery.

4.2 These formal agreements provide clarity around responsibilities, and some have statutory protections to protect the tenant and landlord interests e.g., rights to renewal under the Landlord & Tenant Act 1954. The terms of lease agreements have evolved over many years, being refined by case law, the negotiation strengths of the parties involved and the economic conditions at the time of the grant of the lease.

4.3 Failure by either party to comply with the terms of the agreement may result in legal action or significant financial cost. Therefore, it is crucial the Council does not enter into lease or license agreements without appropriate due diligence checks and professional advice.

4.4 The leases/licence agreements the Council enters into fall into three categories:

- Agreement with a commercial or non-commercial interest or group for the purpose of supporting a council service function or furthering a council interest, including revenue generation.
- Agreement for a property that the council holds to fulfil its strategic objectives or service needs.
- Agreement for purposes other than for those that satisfy a council function or further a council interest, provided they do not interfere with any other council functions, e.g., telecommunications facility, unused right of way, temporary occupation of a surplus property etc.

4.5 Asset Management Team

4.5.1 The estates surveyors in the Asset Management Team will lead on agreements for all property transactions giving rise to an interest in land as outlined in the scope of this document at section 2.0. The team will:

- Ensure that any lease/licence agreement entered into meets service requirements and customers' needs
- Support the service areas that retain ongoing responsibilities with advice on lease terms
- Monitor the local property market and relevant external influences so that commercial lettings reflect the optimum value and increase revenue to the council
- Hold an accurate and up to date record of all lease and licence agreements
- Manage key trigger dates such as lease terminations, rent reviews, break notices to mitigate risks and optimise the value of the estate.

4.6 External Advice

4.6.1 At times, the Asset Management team may procure advice through external RICS (Royal Institution of Chartered Surveyors) regulated specialist firms. This may be because the letting is specialised and there is not sufficient expertise in-house, it may be exceptionally complex as part of a wider Council project and/or it may be of high value.

4.6.2 In consultation with the Service Area, the Asset Management team will document the fee instruction and lead on procurement of these services. These instances may incur a fee to be charged to the Service as the estates management budgets only provide for routine estates management. Services will need to take these costs into account when planning property and land projects. Early consultation with the Asset Management team is recommended.

4.7 Selecting Tenants

4.7.1 The Asset Management team will prepare the marketing of available opportunities. This will ensure that the right agency route is identified, the marketing material and all relevant information is collated for prospective tenants to review and that the marketing process and period supports the Council's obligations under the laws surrounding best consideration.

4.7.2 As a guide, several factors are reviewed when selecting tenants and these factors are weighted depending on the reason for the letting. These include, but are not limited to:

- Ability to satisfy statutory best consideration requirements
- Economic impact
- Community engagement
- Environmental impact
- Job creation
- Commercial viability
- Operational risk
- Financial acceptability
- Ability to set up a community management committee

- 4.7.3 In all transactions, the Council will undertake appropriate due diligence arrangements in relation to confirming the identity of the party, anti-money laundering measures, appropriate credit references. The Council will not enter into lease with a party where an existing debt exists, or the individual is an employee.
- 4.7.4 The marketing will confirm that applicants are required to submit a bid for the property which will be reviewed against the criteria listed above, plus any specific criteria relating to the property under consideration. Tenant selection will be based upon the purpose for which the property is held and a combination of the above factors relevant to the letting in question.
- 4.8 The lettings process
- 4.8.1 The estates surveyors within the Asset Management team will enter into negotiations with prospective tenants and service areas with the aim of reaching an agreed set of Heads of Terms, which will form the basis for the formal lease agreement.
- 4.8.2 All Heads of Terms will be forwarded to the Commercial or Asset Manager, and the Service lead, for initial consideration and comment. Final Heads of Terms must be authorised by the Assistant Director of Assets and Environment, who may delegate levels of authority to the Assets Management team.
- 4.8.3 New leases will reflect market values and be supported with comparable evidence of similar transactions for transparency purposes.
- 4.8.4 In exceptional circumstances, and following the financial procedure rules, community or social value may be considered as a full or partial abatement of rent where the use of the property supports the Council's aims and objectives.
- 4.8.5 Maintenance and insurance responsibilities will be made clear within agreements. The Council is unlikely to enter into leases which increase the Council's maintenance liabilities, and any requests that increase budget costs will need to be authorised by the relevant finance officer.
- 4.8.6 Service leads will be kept informed of progress as agreements progress.
- 4.9 Heads of Terms
- 4.9.1 Heads of Terms set out the main elements between both parties and are agreed prior to a lease being produced and entered. The Council has standard templates for this function and the Asset Management team will ensure that all communication with third parties is legally caveated to protect the Council's interests. It is vital no other officers engage third parties in negotiations of lease terms, to avoid inadvertently committing the Council to a course of action or waive a right the Council has.
- 4.9.2 North Northamptonshire Council Heads of Terms will include:
- Agreement type – lease, licence, wayleave, easement, periodic tenancy.
 - Permitted use of the land and property.
 - Term - how long the agreement runs for.
 - Rent - assessed to reflect the market rent for the property based on comparable evidence of similar properties.
 - Rent Review - usually set at a three to five-year interval, assessed on the basis appropriate to the agreement e.g. market rent or inflation index.
 - Rent deposit – where appropriate an amount held by the Landlord as security against non-payment of rent. The amount requested will reflect the risk posed by the transaction and bargaining position of the parties.
 - Maintenance - all new leases should seek to limit repairing and maintenance obligations on the Council. In the case of lettings of the Commercial estate, these are typically on a full repairing basis (or effective full repairing via a service charge) with the tenant being

responsible for all repairs; which is reflected in the rental terms. Shorter agreements, or those to community organisations are likely to have reduced obligations on the tenant, such as internal only repair obligations. The terms will vary though depending on the length of the term granted and the circumstance of the transaction. Any requests for the Council to retain liability will be reviewed by the Asset Management team with guidance provided on due process for these requests.

- Insurance – The Council will insure its buildings and recharge the cost to the tenant. Public liability insurance to a minimum indemnity level of £5 million will also usually be a requirement of the tenant.
- Business Tenancies – confirmation of whether the contract falls within the remit of a protected business tenancy under the Landlord and Tenant Act 1954.
- End of Lease Procedures - including responsibility for dilapidations. All new agreements will set out what the expectations are upon both parties at the end of the term

4.10. Leasehold Management

4.10.1 Once the lease is formally agreed it is important the terms of the lease are managed proactively to protect the Council's interest. A particular focus will be held on lease events that require formal action by the Council; where such events are governed by statute and require action within set timeframes. Such matters include:

- Lease Renewal
- Rent reviews
- Requests to assign the lease to another party
- Requests to alter the premises
- Service Charge budget and reconciliation
- Rent deposit management
- Rent payment, arrears recovery and forfeiture. Such processes will follow the Council's Income Collection policy, with thresholds for recovery action approved by the Assistant Director Assets & Environment.
- Maintenance requirements and dilapidations.
- All such matters will be referred to the Asset Management team to lead and manage in consultation with the relevant Service Area.

4.11 Management Agreements

4.11.1 Management agreements provide a contractual means for the Council to commission activities via third parties, typically in return for a grant or concession payment. Such contracts include performance agreements, concession agreements, service level agreement and events management. Examples of such contracts include the operation of community services or catering contracts.

4.11.2 Where such an arrangement involves all or part of a council owned asset being operated by a third party with exclusive possession, a lease agreement must be put in place to govern the occupancy. Engagement with the Asset Management team should be undertaken to ascertain the requirement for a lease prior to any procurement exercise or discussion with third parties.

4.12 Governance

4.12.1 The authority for the granting and/or modifying leases, easements, licenses and wayleaves of, in or above buildings or land is found in the Council's constitution.

4.12.2 This policy supports the existing governance arrangements and authorisers of delegated decisions will be required to follow the process in this policy before they authorise a leasehold transaction.

4.12.3 All Heads of Terms must be authorised by the Assistant Director of Assets and Environment, who may delegate levels of authority to the Assets Management team.

- 4.12.4 Once the Delegated Decision is approved by the relevant Executive Member or Officer, the Asset Management team will instruct Legal Services. Instructions on property transactions received directly from Service Areas should not be accepted.
- 4.12.5 Given the volume of transactions processed across the Council's estate, individual Ward Councillor consultation on each letting is not feasible nor possible within existing resources. However, the Asset Management Team will brief the relevant Executive Member on progress and completion of lettings on a periodic basis, with such information made available to Ward Members as required, noting commercially sensitive information cannot be released.
- 4.12.6 In circumstances where a leasehold transaction may cause significant community impact, views of Ward Councillors can be sought in order to support the Council's objectives for the property or land.

5.0 Next steps

- 5.1 Establish internal procedures to ensure leasehold transactions follow the above policy.
- 5.2 Publish the Corporate Property Leasehold Policy and share with appropriate stakeholders.