

## CABINET

22 October 2013

<b>Title:</b> Proposal to Regularise Property Leasing Arrangements	
<b>Report of the Cabinet Member for Finance</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> Yes
<b>Report Author:</b> Andy Bere, Asset Strategy Manager	<b>Contact Details:</b> Tel: 020 8227 3047 E-mail: <a href="mailto:andy.bere@lbbd.gov.uk">andy.bere@lbbd.gov.uk</a>
<b>Accountable Director:</b> Jonathan Bunt, Chief Finance Officer	
<b>Summary:</b> <p>This report seeks approval from Cabinet on a policy to formalise and regularise property leasing arrangements within regards leases at less than market value.</p> <p>At present there is no clear and consistent approach on the level of support given to third parties wishing to lease Council property assets at less than market rent and historically, the Council has entered into property agreements with a number of organisations which vary in terms of structure, rent support and recovery of costs. Some organisations pay market rents, some pay no rent at all and others make minor contributions to the costs of utilities, maintenance and other liabilities.</p> <p>This policy seeks to address this and proposes a revised set of arrangements that allows a mechanism for third parties to apply for financial support with rent that is linked to the delivery of corporate and departmental objectives and provides a transparent and consistent approach in the leasing of Council property assets.</p> <p>An officer working group, established by CMT with representatives from all Departments, met on several occasions to discuss the revised process and the revised arrangements as set out in this report.</p> <p>The proposed Policy will exclude rents associated with Community Asset Transfers driven by the Council and agreed by Members in September 2008 with regards to Community Centres as well as the Transfer of Assets or Services as part of the Community Right to Bid or the Community Right to Challenge elements of Localism Act 2011. These came into force in 2012 and will be dealt with under the Governments Guidance applied to these transactions.</p>	
<b>Recommendation(s)</b> <p>The Cabinet is recommended to:</p> <p>(i) Agree that future leases with third parties in respect of Council property assets be at a market rent, with rent subsidy levels considered through the submission of a business case; and</p>	

- (ii) To authorise the Chief Finance Officer, in consultation with the Cabinet Members for Finance and Crime, Justice and Communities, to agree the formal policy including the scoring mechanism, linked to the delivery of Council priorities, by which rent subsidy levels shall be determined.

**Reason(s)**

To ensure that property leasing agreements at less than market rent provide consistency and transparency that link to the overall priorities and objectives of the Council. This policy will assist the Council in making better use of its resources and assets.

**1. Introduction and Background**

- 1.1 The Council has a number of property assets leased or occupied by third party organisations on rental terms that are less than the market rent or at peppercorn rents. Many of these arrangements are historic and involve voluntary and community sector groups.
- 1.2 The Council currently has a relationship with a number of voluntary and community sector organisations and provides financial support in one form or another to many of these through grants, commissioning agreements or service contracts. However, the form of financial support that the Council provides to these organisations related to the use of property assets has varied.
- 1.3 This report sets out the arrangements for agreeing a policy to formalise future property leasing agreements based on a market rent and then the subsequent agreement to apply a 'subsidy' or grant to support those groups unable to afford the market rent and is able to demonstrate they deliver against Council objectives.
- 1.4 This regularising of the Council's approach to all property leasing arrangements will provide a transparent and consistent approach in ensuring that the occupation of all Council property is on a commercial market rent basis and that groups receiving a rent subsidy are delivering against agreed Council priorities.
- 1.5 It is proposed that the process outlined in this report excludes Community Asset Transfers driven by the Council and Transfer of Assets or Services as part of the Community Right to Bid or the Community Right to Challenge elements of Localism Act 2011 (which came into force in 2012) as these will be dealt with under the Governments guidance applied to these transactions.

**2. Proposal and Issues**

- 2.1. Without a regularised approach to managing property leasing arrangements the Council is unable to safeguard the use of their property assets or ensure that any group receiving a subsidy in respect to rent, deliver and continue to deliver against Council priorities and objectives.
- 2.2. Under the proposed policy, the practice of advertising all vacant Council property assets at market value (following a rental valuation) would continue and any third party group / organisation that subsequently approach the Council requesting

financial support with the rent would initially be required to satisfy certain criteria such as financial viability (ability to meet the required rent), access to external grant funding (i.e. Lottery), to help determine those groups whose financial position is sufficient to sustain a rent for any length of time.

- 2.3. Should the group meet these criteria, an appropriate 'sponsoring' Service Department would be identified to assist in drafting a business case to outline the basis for agreeing rent support. A template for the business case will ensure a consistent approach and would include the following -
  - How the third party's occupation contributed towards the delivery of the Council's corporate and departmental objectives.
  - Details of any service contracts connected with the occupation of property assets, as these should run co-terminus with the length of any property agreement (lease etc).
  - Any liabilities associated with the occupation that may remain with the Council.
  - The condition and use of the property to be leased and any other specific lease terms.
- 2.4. The business case would then be 'scored' against the number of Council priorities and Departmental objectives it delivered against in order to calculate the level of rent subsidy to be applied.
- 2.5. Formal documentation (e.g. the lease) would then be prepared based on the market rent along with the details of the rent support agreed and groups should not be allowed to occupy property assets without some form of formal agreement in place (lease, tenancy at will, licence to occupy etc).
- 2.6. The rent subsidy would be agreed for three years with annual monitoring to ensure the satisfactory performance against the delivery of Council objectives.
- 2.7. Regularising the Council's approach to all property leasing arrangements will provide a transparent and consistent approach to ensure that the occupation of Council property assets is provided on the basis of a unified leasing policy.
- 2.8. Where a third party occupies part of a building only or where the use/occupation has limited commercial interest i.e. – its value is in its use by that particular organisation (e.g. – miniature railway at Barking Park), the cost of occupation to the third party should at least cover the Council's running costs (utilities, rates etc).

### **3. Reviewing Existing Arrangements in Place**

- 3.1 Work across all Departments has taken place to establish to extent of the existing arrangements in place for groups occupying property assets at less than market rent.
- 3.2 Many groups already have market rent leases in place and are therefore not subject to this Policy whilst a small number of other groups receive assistance with maintenance liabilities or have leases on peppercorn rents. The ability to amend any current arrangements is therefore limited to within the constraints of the current

legal documentation and these arrangements will be left to run the term of their lease.

- 3.3 Where current groups are in occupation with no formal agreement in place it is proposed that these be reviewed under these new policy arrangements.
- 3.4 The proposals outlined in this report are designed to respond to specific property related issues. They are not intended to interfere in any way with other grant or support strategies operated by the Council which cover a broader range of issues that relate to groups which may not occupy Council property assets.

#### **4. Consultation**

- 4.1. In addition to the officer group that have met on several occasions, various service departments within the Council have been consulted in the writing of this report.

#### **5. Financial Implications**

Implications completed by: Jonathan Bunt, Chief Finance Officer

- 5.1. This report is seeking permission to create a formal policy to outline the treatment of leasing Council-owned properties to external organisations.
- 5.2. This report outlines that the Council would receive additional income if all occupants of property owned by the Council paid the market rate. As the market rate would only be applicable at the lease renewal date the Council would not receive the full benefit in year one but on a phased basis.
- 5.3. Any income budgets for the buildings in question sit either within the Property Services Commercial portfolio or with the relevant service area, which currently has responsibility for that particular building.
- 5.4. The report suggests that all organisations pay the full market value of the property they are occupying and those VSO organisations that are eligible for financial support receive this by means of a subsidy application to the council. Assuming all organisations receive full subsidy for any increase in rent, the impact on both the Council and the organisation will be neutral with a budget to pay the subsidy created offsetting the extra income. Where there is an instance of less than full subsidy, there will be additional income to the Council.
- 5.5. By allocating for a three year period and incorporating annual reviews, the authority retains the ability to ensure that the organisation receiving the subsidy continues to meet Council priorities. Should this not be the case, the subsidy would stop or reduce resulting in potential additional net income.

#### **6. Legal Implications**

Implications completed by: Eldred Taylor-Camara, Legal Group Manager

- 6.1. The report details proposals to regularise leasing arrangements with voluntary sector organisations occupying Council premises. Section 123 Local Government Act 1972 and the Council's land disposal rules require land to be disposed at market value.

- 6.2. Statutory consent for disposal at undervalue is available to local authorities if it secures the promotion or improvement of the economic, social or environmental well-being of its area provided that the undervalue (as assessed) does not exceed £2m.
- 6.3. It is necessary for the Council to develop a policy in relation to its leasing arrangements generally and in particular in relation to the Voluntary Sector. The adoption and robust and fair application of a policy reduces the risk of a legal challenge or judicial review of its decisions. A clear policy ensures transparency in the process.
- 6.4. A key area for consideration is the impact of any policy or lack of policy on procurements where the voluntary sector seeks to compete with the private sector for Council contracts. Procurement rules require that there is transparency and non-discrimination in the tender process. Voluntary sector bodies should for example compete for Council contracts e.g. to provide services in Council properties, on the same basis as the private sector to ensure that bids are evaluated on the same basis such that the total price bid includes the respective bodies' rental costs. It would be discriminatory to require a private sector bidder to pay rent to the Council but not a voluntary sector body.
- 6.5. There are also equalities issues that need to be addressed and incorporated into any such policy.
- 6.6. The Legal Practice should be consulted to assist with the preparation and completion of any such leasing policy.

## **7. Other Implications**

- 7.1. **Risk Management** - There is a significant risk that regularising property leasing arrangement, and hence implementing full market rents, could cause a number of Voluntary and Community Sector Organisations to cease operating because the costs of them doing so will become too high to bear. Implementing the provision of financial assistance through service departments at the same time as regularising property leasing arrangements will reduce but not negate the risk of Voluntary and Community Sector Organisations failing as a result of adopting this approach as it is fair to assume that in time some of these organisations will cease to receive financial support from the Council. However, the recommended approach should ensure that financial support is at the discretion of the service department best placed to ensure a clear, fair and consistent approach that is accountable and which supports the Council's key aims and policies. In addition, it is clear that without the regularisation of property leasing arrangements the Council will continue to potentially put itself at risk by merely reducing rents payable for its properties as this could be seen as offering a hidden subsidy towards the operational costs of occupying organisations.

The regularisation of property leasing arrangements will assist in the mitigation of 'Corporate Risk 23 - Asset Management' and assist with clarity around 'Corporate Risk 25 – A thriving Third Sector'.

Doing nothing retains the risk that the Council will continue to subsidise lease rents without a clear, articulated and consistent approach in this respect. In the many

instances this may also leave the Council open to the tenant subsequently assigning the lease to another party that is not a community or voluntary sector organisation at the same preferential rent for the remaining period of the lease term, hence negating the reason for the subsidy in the first instance.

7.2. **Contractual Issues** - The Council's legal team will continue to deal with property related documentation in its usual professional manner.

7.3. **Customer Impact** - The regularisation of property leasing arrangements will provide clarity for current and prospective Council leaseholders.

The introduction of any revised approach is likely to result in some groups that consider themselves disadvantaged but hopefully these can be kept to a minimum through ensuring the provision of financial assistance through service departments in implementing alongside the regularisation of property leasing arrangements.

7.4. **Health Issues** - There is a risk that these proposals could impact on health issues if a Community or Voluntary Sector Organisation providing health services ceases to operate because the costs of them doing so will become too high to bear as a result of the proposed regularisation of property leasing arrangements. However, consideration of this element will need to be considered when formulating the service department criteria for the provision of financial support in a clear, fair and consistent manner to minimise any potential impact.

7.5. **Property / Asset Issues** - This report is centred on property /asset issues so they are covered in the body of the report.

**Background Papers Used in the Preparation of the Report:** None

**List of Appendices:** None