

EAST RENFREWSHIRE COUNCILCABINET7 April 2022Report by Director of EnvironmentGRANTING OF COMMERCIAL LEASES POLICY AND PROCEDURES**PURPOSE OF REPORT**

1. This report is to seek approval for a revised Council policy concerning granting of commercial leases or licences of Council assets to prospective tenants. This is distinct from potential Community Asset Transfers which are covered by a separate report.

RECOMMENDATIONS

2. The Cabinet is asked to:
- a) Approve the Policy and Procedures for Granting of Commercial Leases as outlined in Appendix One; and
 - b) Support the upgrading to the ERC webpage to add a page for Council Commercial Assets, and promote the Council's policy on leasing these assets to help businesses and communities understand the procedures required to let a commercial council asset.

BACKGROUND

3. East Renfrewshire Council provides a range of commercial properties for let across the Council area including ground rents, industrial, shops and office premises.
4. There are two principal reasons why the Council leases commercial property namely:
- Commercial properties are let in areas where the market is recognised to have failed, and therefore they drive economic development by generation of business and employment in areas where it would otherwise not flourish.
 - To generate income through the leasing of commercial properties. This helps sustain Council operations.
5. The property portfolio raises revenue income in the region of £975,000 per annum split between the Economic Development and Housing Revenue Account budgets.
6. The existing policy and procedures were last reviewed some years ago and the proposed revised guidance entitled "Granting of Commercial Leases, Policy and Procedures" (see Appendix One) seeks to update the Council's practices.

7. Enhancing/clarifying the existing procedure will make the process of granting a commercial lease more transparent to business and third sector organisations, as well as give clear guidance to council officers, in particular the Estates team on the council's policy for managing its property assets.

REPORT

8. The full policy proposed can be found at Appendix One.

9. It is proposed the full policy document will be made available on the Council's website to help give prospective tenants a clear understanding of the process and how decisions are reached.

10. The new policy divides the cycle of letting an asset into three distinct stages with the detail noted in the document attached;

- Stage One: Marketing & Inspection
- Stage Two: Granting of a Lease or Licence
- Stage Three: Termination

FINANCE AND EFFICIENCY

11. There are no known financial implications.

CONSULTATION

12. There has been consultation within the Economic Development Team of the Environment Department, Legal Services and Accountancy Services.

PARTNERSHIP WORKING

13. No partnership working has been required in the preparation of this report.

IMPLICATIONS OF THE PROPOSALS

14. There are no legal, financial, staffing, IT or equality implications associated with this report at this point in time.

CONCLUSION

15. The policy will ensure the Council's procedures in dealing with the letting of commercial properties are dealt with in a consistent and transparent manner. The policy will also provide clarity and continuity for the Estates Team in how they deal with the day to day management of the Council's commercial property portfolio.

RECOMMENDATIONS

16. The Cabinet is asked to:
- a) Approve the Policy and Procedures for Granting of Commercial Leases as outlined in Appendix One; and
 - b) Support the upgrading to the ERC webpage to add a page for Council Commercial Assets, and promote the Council's policy on leasing these assets to help businesses and communities understand the procedures required to let a commercial council asset.

Director of Environment

Further information can be obtained from Phil Daws Head of Environment (Strategic Services), phil.daws@eastrenfrewshire.gov.uk

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March 2022

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**APPENDIX ONE
THE POLICY**

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GRANTING OF COMMERCIAL LEASES POLICY



1. Introduction

- 1.1 This policy underpins the practices and procedures which East Renfrewshire Council Estates team utilises in the letting and estates management of the Council's commercial property portfolio and aims to provide a comprehensive and transparent document to guide the day to day activities of the Estates Team.

2. General

- 2.1 East Renfrewshire Council provides a range of properties for let across the Council area. There are two principal reasons why the Council leases commercial property.
- 2.2 Firstly, the Council retains an economic development role by providing commercial accommodation in areas where the market is recognised to have failed, and in this way generate business and employment in areas where it would otherwise not flourish.
- 2.3 Secondly to generate sufficient income through the leasing of commercial properties; this helps sustain Council operations. The property portfolio raises revenue income to support these financial needs.

3. Stage 1: Marketing of Properties

- 3.1 Inspection & Preparation of Marketing Particulars- When a property becomes vacant and is ready to be advertised, a member of the Estates team will undertake a survey of the property and prepare a set of marketing particulars detailing key pieces of information including;
- Location
 - Size
 - Price
 - Planning
 - Rates
 - Statutory Requirements
 - Any other information relevant to the property
- 3.2 How Properties are advertised – The wide range of advertising routes and tools which the Estates team utilises are noted below
- 3.3 Lists of all available property should be circulated electronically and by post (if requested) to interested parties.

- 3.4 A database of enquiries and property requirements will be maintained by the Estates team and used to provide a list of interested parties for properties as they become available. This document is held in accordance with the Council's data protection guidelines.
- 3.5 Details of individual vacant properties in the form of property particulars should be available to download from East Renfrewshire Council's website.
- 3.6 The Estates team will also make appropriate use of commercial property marketing websites. These sites also provide details of the available properties for other private and public landlord's across Scotland and the Estates team will direct interested parties to these sites if we cannot satisfy their property requirements.
- 3.7 Individual properties are usually advertised through the use of social media advertising on platforms such as Facebook and traditional advertising boards at the subjects.
- 3.8 If appropriate, industrial estates and business centres are promoted through general advertising boards for each location.
- 3.9 Industrial or less prominent properties are not generally promoted through the use of advertising boards to reduce the risk of burglary and vandalism.
- 3.10 High profile or sought after properties may be advertised in local newspapers and occasionally in the national and trade press.
- 3.11 The Estates team continues to develop and produce information which is designed to support existing and prospective tenants. This will be developed to provide augmented advice on those seeking properties and more particularly a Tenants' Handbook which will be designed to assist prospective tenants in taking on a lease and after they have move in.
- 3.12 All enquiries received by the Estates team will also be feed to the Council's Economic Development Team and its Business Gateway partners to ensure all possible advice and assistance is provided as this can be vital for both new start and existing businesses.

4.0 Basis of Marketing

- 4.1 Marketing Campaign: All Commercial Property Portfolio properties which become vacant are placed on the open market, through the marketing tools detailed in Section 3 above, at a marketing rent (see 6.2). The marketing process seeks to advertise the availability of commercial properties to as wide a catchment as is practically possible.

- 4.2 A minimum of a two week marketing campaign will be undertaken and parties on the Council's database contacted via electronic mail.
- 4.3 **First Come First Served Basis Process:** The council hold some properties where demand for the style, size or use of the premises does not attract a lot of interest. In these cases, it is appropriate to let these properties on a first come first served basis. This allows for a quicker letting process which is vital for many tenants, and helps the Estates team to maintain a relatively high level of occupancy.
- 4.4 Interested parties must complete and submit a Property Application Form before a property is considered "Under Offer". No fee or deposit is currently required at the application stage although this may be reviewed. An application does not place the interested party under any form of contract to lease the property.
- 4.5 Once a property is Under Offer, the applicant has the right of first refusal on that property for the period of one month. If, after the period of up to a month no substantive progress is being made in the letting, the Estates team retains the right to put the property back on the market subject to the Estates team issuing a 7 day ultimatum to the applicant in writing.
- 4.6 **Tender Process:** Some properties are often particularly sought after. When such properties become available they may be offered on a closed tender basis with a one week notice period of the Council's intention to set a closing date for offers and all parties who viewed the property will be informed for the closing date electronically.
- 4.7 In situations where offers to lease commercial property are submitted, these require to be returned as sealed bids to the on or before a nominated date, time and place, and they will be opened and recorded in accordance with the Estates team procedures.
- 4.8 As part of this process the Estates team will make prospective tenants aware of Council's asking price for the property. In addition, the Estates team will ensure tenants are advised to only submit bids which are sustainable in terms of each individual tenant's business plan. It is neither in the tenant's interest, nor the Council's interest for a business to fail due to an over inflated offer.
- 4.9 The Estates team will consider any offers received and determine which offer is successful in accordance with Section 8 below.
- 4.10 Whilst the rental to be paid is always the predominant consideration in determining the success of a bid, other factors may be taken into consideration such as use, sustainability of the business and benefit to local area and employment and the length of lease required. Any incentives requested will be factored into the assessment of the offer. Consequently the highest rental offer may not always be successful. This can occur if the bid is believed to be unsustainable or if the diligence completed identifies issues of concern relating to the proposed tenant.

- 4.11 After considering the merits of each offer a report will be submitted to the Principal Officer, Asset & Property Management for approval under delegated authority.
- 4.12 Following the assessment of the offers, the Estates team will advise the successful applicant and proceed with the letting process.
- 4.13 Where a property has been tendered but no acceptable bids have been received, the property will be placed back on the open market.
- 4.14 Experience has shown that market conditions can change and if demand is weak with limited enquiries it may not require the use of a tender exercise. It will therefore remain at the discretion of the Estates Team as to whether a tender exercise is necessary.

5. Business Support

- 5.1 Details of potential tenants who contact the Estates team regarding available property are passed to the Council's officers in Regeneration, to investigate whether the Council or Business Gateway can provide any form of business support.
- 5.2 Estates officers will actively seek to direct prospective tenants to business support as this undoubtedly assists for new businesses..

6. Basis of Rents

- 6.1 **RICS Governance:** East Renfrewshire Council is registered as a firm under the regulatory governance of the Royal Institution of Chartered Surveyors (RICS). The Estates surveyors are therefore compelled to complete the valuations we carry out on behalf of East Renfrewshire Council in accordance with the RICS regulations and guidance. This also ensures that Estates surveyors meets the requirements of the Council's Professional indemnity insurance policy.
- 6.2 In addition to this East Renfrewshire Council, as a public body, is obliged to recognise the Land Disposal Regulation. Under the terms of the Local Government (Scotland) Act 1973 Section 74(2), "*a local authority shall not dispose of land under subsection (1) above for a consideration less than the best that can reasonably be obtained*", this legislation applies equally to sale or lease. Whilst Section 74 has been modified by the Local Government in Scotland Act 2003 and The Disposal of Land by Local Authorities (Scotland) Regulation 2010, this central assumption remains out with exceptional circumstances.
- 6.3 Notwithstanding the above noted legislation, in line with the Property & Estates business plan, The Estates team must achieve the best possible rental return from its portfolio so its client services can continue to secure the income required for their operational purposes. Consequently the Estates team should always seek to achieve the best sustainable rental return from each property within its portfolio.

- 6.4 For the vast majority of rented properties, the best return is determined by deriving a rent based on comparing rents from new lettings of similar properties in the same or similar locations at around the same date as the date of valuation. This is known as the Market Rent which is determined by the comparative method of valuation. Listed below is a brief explanation of how that relates to the valuations that are carried out for leased out properties. The Estates team also utilises the International Property Measurement Standards or the RICS code of measuring practice in the valuation process.
- 6.5 **Marketing Rents:** (i.e. asking rents) these are based on evidence of recent comparable rents in the area. Where evidence is limited, market knowledge and rental trends are used to inform and underpin professional judgement. Marketing rents are produced to provide guidance for prospective tenants the marketing rent is only a guide price. The rent finally agreed may be above or below that figure depending on market conditions and the level of interest.
- 6.6 While the Estates team adopts a comparative valuation approach in all its valuations some properties are valued by comparing the turnover which can be achieved from properties. This type of comparable valuation is utilised for the valuation of some ground leases and also for public houses.
7. **Initial Rent:** This is generally the rent paid in the first year which is agreed between the landlord and a new tenant, but may vary from the marketing rent for a number of reasons:-
- **Tenders:** in a bidding situation, applicants may decide a property is more or less valuable to their business than the marketing rent.
 - **Repairs:** it may be agreed between the Estates team and an incoming tenant that the tenant carries out repairs to the fabric or services of the building which would fall under the landlords remit to fund, and that part or all of that cost can be deducted from the rent over a period of time.
 - **Market Forces:** changes in the economy or competing private landlords offering rental incentives can undermine the Estates team ability to secure a letting at the marketing rent. In these cases, the Estates team may need to match the rental incentives being offered in the wider market to secure the letting of a property that may otherwise remain vacant for a considerable period. This has the benefit of securing revenue for the Council, reducing the Council's rates liability and securing employment in East Renfrewshire that may well go elsewhere. However, any such incentives should be signed off by management before they are offered.
 - **Rent Reviews:** These transactions are calculated on the same basis as other rentals with reference to rental evidence in the locality, which is used to determine what the Market Rent would have been if the property was let on the open market at the rent review date. Some older leases or leased-in properties may have a different rent basis.

- 7.1 **Lease Renewals:** These transactions are also reviewed to the Market Rent, based on recent rental evidence in the locality at the date of the renewal. The Council is one of the few landlords that offers highly flexible leases, let on either a monthly, annual or short term basis to tenants. In these short leases, a review date cannot be specified, so leases must be terminated and renewed to allow the rent to be reviewed. Therefore, under the terms of the 1973 Act, the short term leased properties must be considered for rental uplift on a regular basis which would normally be every three or five years depending on the type of property.
- 7.2 **Rental Negotiations:** Tenants often expect the Estates team to consider their individual business or increase rents in line with indices, or some other mechanism. However, The Estates team must consider the 1973 Act what the property could be let for on the open market at the appropriate date. This is also the standard approach to valuing commercial properties and ensures that the Council's rents are in line with private sector rents and that the Estates team achieves the best possible return from its properties.
- 7.3 **Exceptions to Market Value:**
- 7.4 The Estates team will also occasionally lease its properties to charitable organisations on a week to week basis on a £1 if asked rental basis but with tenants responsible for all other costs including Non Domestic rates. Such tenancies are subject to a maximum term of 52 weeks. If the tenant wants to remain in the property thereafter they will need to pay the Market Rent or consider options under a Community Asset Transfer request.
- 7.5 Any properties leased on this basis will be left on the marketing list to try to secure a commercial tenancy. This will include letting boards being retained on the properties and the Estates team will also retain the right to carry out viewings of these properties with prospective tenants. The policy is therefore usually only considered appropriate for properties which have proven difficult to let and charitable tenants may need to be moved out at short notice. However the Estates Team will seek to provide as much notice as is possible to tenants occupying property under this policy.

8. Management of the Commercial Property Portfolio

- 8.1 **Permitted Use:** The Estates team seeks to provide commercial accommodation to a wide range of businesses, however this does not mean that the Council must, or is able to, support all businesses in all localities. Certain types of use can be regarded as a nuisance which can cause difficulty and disruption to other occupiers, and ultimately lead to a drop in the quality of an estate, the rental income and occupancy levels.
- 8.2 The types of uses which cause the greatest difficulty are:
- (i) Vehicle Maintenance - congestion and pollution issues
 - (ii) Haulage and Distribution - congestion and road/landscaping damage issues
 - (iii) Taxi/ Hire Car - congestion

- (iv) Car Wash/Valeting - water and chemical run-off and congestion
- (v) Waste Handling - waste overspill and pollution

8.3 If it is not possible to accommodate these uses without detriment to other tenants the Estates team will refuse to offer a lease to a prospective tenant.

Other problematic uses include:

- (i) Heavy Engineering - heavy equipment, noise, and pollution issues
- (ii) Dirty industrial uses - noise and pollution issues
- (iii) Food processing/Catering - food waste, vermin, blocked drains
- (iv) Hot food takeaways and restaurants – odour nuisance to neighbours
- (v) Construction - construction waste and congestion
- (vi) Licensed off sales and other Licensed uses

The Estates Team will however consider the suitability of these uses for specific locations on a case by case basis and reserves the right to refuse a letting for problematic uses.

9.0 Stage 2: Granting of Leases

- 9.1 The Estates team offers a wide variety of lease terms, depending on prospective tenants' needs or security of tenure, demand for the units or East Renfrewshire Councils future plans for the properties, the majority of which are highly flexible, running on year to year basis.
- 9.2 The Principal Officer, Asset & Property Management has delegated authority as per the Scheme of Delegation agreed by the Council to agree lease terms for East Renfrewshire Council properties in connection with all non-contentious leases.
- 9.3 Tenants entering into short or long term leases are always advised to seek their own legal representation. However, if they choose not to, East Renfrewshire Council is able to offer tenants the standard lease documentation prepared by the Council's Legal Services team.
- 9.4 East Renfrewshire Council charge prospective tenants our properly incurred legal and administration fees.
- 9.5 Any contentious Leases must be put forward to Cabinet for approval and must be referred to Legal Services for drafting. This may also require discussion with the tenant's legal representative and can be a longer, more expensive, process.

10. Lease Terms

- 10.1 Repairs:** As is standard practice for commercial leases, all East Renfrewshire Council leases are granted on the basis that the tenant carries out and pays for all internal and external repairs and repays the East Renfrewshire Council the cost of buildings insurance. This will be made clear in writing to all incoming tenants by East Renfrewshire Council prior to a lease being signed, and is clearly defined in the lease and supporting documents such as the Tenants Handbook. In cases where issues arise shortly after new tenants move in, East Renfrewshire Council may take reasonable action to resolve any initial problems. Where there is a long standing tenant, the full responsibility remains with the tenant.
- 10.2 East Renfrewshire Council retains the right to carry out common repairs in properties which share building elements, such as the roof in a business centre or in a terrace of industrial units. Acting as landlord East Renfrewshire Council can therefore choose to “factor” common repairs and may seek to do this to ensure tenants repairing obligations are enforced. This service will prevent individual businesses having to organise repairs separately and may achieve cost savings through economies of scale. Tenants will however remain responsible for the financial burden of repairs.
- 10.3 This service may be extended at the Estates team’s discretion to include servicing gas appliances within properties, but this may require a separate agreement with individual tenants. Any such costs will be recovered via a service charge on an equitable basis following the guidance provided by the RICS.
- 10.4 **Charges:** When leasing a property, the tenant will agree to take on responsibility for all costs associated with that property: including gas, electrical, water, telephone, internet, contents insurance and non-domestic rates. It is the tenant's responsibility to make the necessary arrangements with these agencies.
- 10.5 **VAT:** East Renfrewshire Council has not currently elected to tax its commercial properties and consequently revenue generated from its portfolio is not subject to VAT. However the Council retains the right to change this position should it require to do so.
- 10.6 **Security of Tenure:** Many East Renfrewshire Council leases are granted on a short term basis. Under Scots Law these leases can continue after the expiry date, unless the Council or the tenant wishes to end the lease. If a tenant requires security of tenure for the continuity of their business, then they should agree a longer lease with East Renfrewshire Council. This generally relates to retail tenancies where the tenant may have a marketable commodity in terms of the goodwill attached to their business and may wish to sell their business and transfer their lease by way of an assignation.

11. Assignation

- 11.1 Tenants on long leases usually have the right to assign or transfer their lease to a third party provided certain criteria are met. As noted in 9.4 this is particularly important to shop tenants who invest significant sums fitting out the shop and building up their businesses and will often seek to recover their investment by selling on their business through an assignation of their lease.

- 11.2 For the same reason, shop tenants who are nearing the end of their leases will often seek to extend their lease. This provides tenants with an asset which can be assigned in the future. East Renfrewshire Council usually supports this practice because it improves the sustainability of local businesses and employment. This investment in East Renfrewshire Council's properties helps to secure long term income generation.
- 11.3 Before East Renfrewshire Council will consider a tenants proposal to assign their lease, the tenant must agree. This can include the following:
- (i) That the outgoing tenant will have met all the lease obligations
 - (ii) Any outstanding payments must be paid before the assignment is concluded. If arrears remain outstanding, the transfer will not be granted and East Renfrewshire Council may need to initiate its debt recovery procedures. This may ultimately lead to the termination of the tenancy if the debt remains outstanding.
 - (iii) The incoming tenant will need to provide satisfactory proof of their ability to meet the financial commitments of the lease. This can be by means of a credit check or bank reference. Alternatively, other forms of documentation such as bank statements and landlord's references may be considered plus a suitable bank reference or credit check shall be sought for each tenant.
 - (iv) East Renfrewshire Council's legal and administration fees must be paid before the settlement of the assignment.

12. Stage Three: Terminations

- 12.1 There are many circumstances in which a tenancy may come to an end. When a lease comes to an end tenants are required to return the premises to the condition in which they were leased accounting for any rent abatements granted for works which the tenant had undertaken to carry out. This process is usually known as completing dilapidations and is discussed further in section 13 below.
- 12.2 East Renfrewshire Council will complete due diligence in such situation to ensure all possible factors are considered before a decision is taken to allow an early termination. This will usually include a financial assessment of a tenants business and often include guidance from the Council's economic development officers and Business Gateway to ensure a tenants circumstances are fully understood.
- 12.3 The reasons why a tenancy could be terminated include:
- (i) Natural Termination date: - All leases will have an intended expiry date. Each tenants and East Renfrewshire Council as landlord will have a right to terminate a tenancy at this date upon service of the notice period noted in the lease. If notice is not served the lease may continue under Scots law for a period of one year or less in the case of month to month leases.

- (ii) Early Termination with landlords consent: - In some circumstance East Renfrewshire Council will be approached by a tenant seeking to terminate their tenancy before the date agreed in the lease. This can happen when tenants find their business is struggling. In each circumstance East Renfrewshire Council's default position is to hold tenants to their contractual date of termination. However Management retain the flexibility to allow a tenant to leave early prevent them falling into an arrears situation. In these circumstances East Renfrewshire Council will usually expect the tenants to complete any dilapidations necessary to the unit.
- (iii) Moving to another East Renfrewshire Council property: - If tenants wish to expand their business and requires moving premises to do so East Renfrewshire Council will try to accommodate their needs and will allow an early termination of a lease for this purpose. East Renfrewshire Council may also allow tenants to downsize if the tenant is not in arrear and they are moving to another Council unit if it will aid their business to do so.
- (iv) Moving to another private property: - In circumstances where tenants are seeking an early termination to move to another private landlord East Renfrewshire Council may allow this if it believes it will be able to re-let the property quickly. In such circumstance it is usual to seek financial recompense for allowing a tenant to lease early.
- (v) Termination due to court action: - In circumstances where a tenant has built up sufficient arrears and is not able to come to a repayment arrangement East Renfrewshire Council can utilise Court Action to evict a tenant. This option is also available to East Renfrewshire Council if tenants are in non-monetary breach of their lease obligations but this is not usually utilised with other legal mechanisms being open for landlords to use.

13. Dilapidations

- 13.1 At the end of a lease, a tenant is required to fully reinstate the property to its original layout and condition as detailed in their lease terms. If the tenant has adapted or changed a property, even though they consider this an improvement, if required by East Renfrewshire Council, it must be fully reinstated to its original condition. As a general rule, East Renfrewshire Council will require this work to be carried out but may, if the alterations support the future leasing of the property, accept the improvements at no additional expense to the tenant, provided that the property is left clean, tidy and in all other respects acceptable.
- 13.2 Outgoing tenants also have an obligation to ensure that any gas appliances have been tested and are safe and that the fixed electrical wiring is safe. East Renfrewshire Council will work with tenants to certify the existing installations at termination. Tenants are also required to provide East Renfrewshire Council with an up to date asbestos register and a note of their utility suppliers.

14. Credit Checks and Financial References & Deposits

- 14.1 In order to comply with money laundering legislation and ensure that the tenant is able to pay the rental, East Renfrewshire Council undertake a series of checks before a tenant is granted a lease. For prospective tenants, these will include:

- (i) **Personal Identification** - tenants are required to produce photographic proof of identification (either a passport, or a birth certificate or driving licence). This also applies to company directors.
- (ii) **Proof of residence** - a copy of residential utility bill or proof of the company's existence.
- (iii) **Proof of the right to work in the UK** - they must demonstrate clearly that they have the right to reside and work in Britain for the period of the lease. This check is not required for limited companies.
- (iv) **Bank Reference or Credit Check:** A suitable bank reference or credit check shall be sought for each tenant.

14.2 It is necessary to establish the prospective tenant's ability to pay, as evidenced by a bank reference or some other form of guarantee. East Renfrewshire Council lets commercial property to support small and start-up businesses. These businesses by definition often find it difficult to provide good financial references and may be unable to secure a lease from a private landlord for that reason. Obtaining references in normal circumstances can be time consuming, and this can delay the letting process.

14.3 East Renfrewshire Council generally accepts references with the wording "good for the purpose of your enquiry", 'respectable and trustworthy' or the lesser 'satisfactory' as good references. However, references which use the terms "cannot comment" or "no information" is regarded as insufficient for our purposes. In these cases, the Estates Team will approach the tenant for some other form of reference. If that is not available, Principal Officer, Asset & Property Management will discuss the matter with the responsible staff member and the debt recovery team and provided that they are satisfied with the merits of the tenant, a lease may still be offered on the basis of a 3 to 6 month advanced rent payment, or in extreme cases a year's rent in advance.

14.4 However, if Management, following discussions with staff is not satisfied with the credit worthiness of the prospective tenant, it may be in East Renfrewshire Council's best interests to refuse to lease property to this tenant.

14.5 Tenants and their associates who have defaulted on rental payments in the past will be required to make good any unpaid rental or other costs incurred by East Renfrewshire Council before a new lease or additional lease is considered.

15. **Payment of Rent**

15.1 East Renfrewshire Council procedure dictates that the keys to a property will not be handed over until a banker's draft or company cheque is handed over for the first payment. In certain circumstances the insistence on a direct debit may be waived.

- 15.2 East Renfrewshire Council's Debt Recovery team will monitor all tenants' payments after leases are completed. East Renfrewshire Council prefers tenants to pay by Direct Debit or standing order and the team will contact every tenant who fails to pay on time.
- 15.3 In circumstances where tenants are paying late but settle the outstanding balance, no further action may be necessary. However the team will be aware of persistently later payers and will monitor these accounts to ensure East Renfrewshire Council's cash flow position is protected. These tenants will be contacted with a view to setting up payment via direct debit.
- 15.4 In circumstances where a tenant is not able to clear an outstanding balance, the Debt Recovery team will seek to come to an arrangement with the tenant to clear the debt over an extended period. East Renfrewshire Council understands that businesses can experience peaks and troughs and East Renfrewshire Council aims to assist tenants through these difficult periods. However, it is important to ensure that tenants are not allowed to exacerbate a debt situation. These debt cases are carefully monitored to ensure that timely action is taken to mitigate losses from bad debt situations.
- 15.5 In cases where debts have accrued over a period of 3 months or more or where arrangements to pay have not been honoured by tenants, it will be necessary to take legal action to recover the property and the outstanding debt. East Renfrewshire Council will handle these cases internally until it is necessary to issue formal notices at which time Council's Legal Services will be instructed to pursue the necessary civil actions via the courts.
- 15.6 East Renfrewshire Council may allow a debt situation to extend for longer than 3 months if there is an agreement with the tenant and East Renfrewshire Council is content that there is a viable business plan to recover the situation. Any such arrangement will be based upon the advice of the Debt Recovery team and /or the Senior Surveyor or Principal Officer; it may also be advantageous to include the advice provided by the Council's economic development officers to help assess a tenant's business situation. the Debt Recovery team will liaise with the Estates team to ensure that debt levels are kept to a minimum.
- 15.7 Tenants may sometimes withhold rent due to disputes regarding lease management issues. East Renfrewshire Council's leases do not allow tenants to do this and while East Renfrewshire Council will try to resolve any tenant disputes, we reserve the right to take whatever action is necessary to resolve debt cases regardless of the tenants rational for not paying their rent.
- 15.8 In future a deposit scheme could be utilised to mitigate losses and bad debts. This would help East Renfrewshire Council to reduce losses associated with the current policy of offering short term leases to more risky start-up businesses. While supporting such businesses is an important aspect of East Renfrewshire Council's business model, the security of a deposit scheme could help insulate East Renfrewshire Council from the small debts which often come from this letting model.

16. Sharing of information

- 16.1 East Renfrewshire Council shares information on new lettings with internal colleagues such as Non Domestic Rates and external bodies such as Renfrewshire Valuation Joint Board and Police Scotland in accordance with the Council's Data Protection policies. Market information is also shared with other property professionals, which is essential to facilitate Estates property transactions. In addition to the above, the Estates team will also notify the appropriate utility providers when a property has been let. The tenant's name along with the property address and the date of entry are passed to the supplier.
- 16.2 The General Data Protection Regulations (GDPR) which came into force in March 2018 altered how the Council utilises tenants' details and personal data and governs the Estates teams' approach to data protection to ensure it complies with GDPR.

17. Complaints

- 17.1 The Estates team utilises the standard Council two stage complaints procedure designed to provide customers with a transparent means of making complaints against The Estates team service delivery and staff.
- 17.2 The policy also provides protection to Estates staff and we recognise that the actions of customers who are angry, demanding or persistent may result in unreasonable demands on time and resources or unacceptable behaviour towards our staff. We will therefore, apply our policies and procedures to protect staff from unacceptable behaviour such as unreasonable persistence, threats or offensive behaviour from customers.
- 17.3 The Estates team will attempt to resolve complaints about service delivery by rectifying any identified service failure. However if the complaint relates to a member of staff or a failure to resolve a service complaint, any such complaint will be noted and answer in line with the agreed procedures.
- 17.4 Complainants also have final right to taken their complaint to the Scottish Public Services Ombudsman if they remain unhappy with any investigations carried out under the policy.

18. Conclusion

- 18.1 This document sets out the policies adopted by East Renfrewshire Council for the management of the Council's commercial property for the purpose of raising revenue and supporting economic activity in East Renfrewshire. It provides clear guidance to staff and elected members but is not intended as an exhaustive list of processes.

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