

READING BOROUGH COUNCIL

REPORT BY MANAGING DIRECTOR

TO:	POLICY COMMITTEE		
DATE:	15 FEBRUARY 2016	AGENDA ITEM:	11
TITLE:	COUNCIL-OWNED PREMISES OCCUPIED BY THE THIRD SECTOR - POLICY STATEMENT		
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 To provide a policy context for future decisions on leases to third sector organisations occupying Council-owned buildings or land. The Policy Statement and Guidance Notes set out clearly and transparently our way of managing these assets, including those that are leased at less than market value.
- 1.2 The Policy Statement and Guidance notes have been prepared in the context of the Reading Borough Council Asset Management Plan 2015-2016 which aims to use property as a corporate resource to support and shape the delivery of appropriately located core services whilst driving efficiencies to help close the budget gap.

2. RECOMMENDED ACTION

- 2.1 That Policy Committee adopts the Policy Statement and Guidance notes on Council-owned buildings or land occupied by the Third Sector as set out in Appendix A of this report.
- 2.2 That Policy Committee agrees that any voluntary sector bids associated with the Policy Statement and Guidance notes will be considered in the context of the Council's priorities as set out in the Corporate Plan in place at that time, including the need for the Council to remain financially sustainable to deliver core services.

3. POLICY CONTEXT

- 3.1 Reading Borough Council's Corporate Plan 2015-2018 states that we need to:
- change our service offer to ensure we deliver core services within our reduced budget so that the Council is financially sustainable and can continue to deliver services across the town
  - Provide our services from appropriately located, safe and energy efficient buildings and seek to maximise the potential for underused council property

- Co-locate our services with partners to have better joined-up neighbourhood services and 'Community Hubs' so that residents have better access to services

- 3.2 Reading Borough Council's Corporate Asset Management Plan 2015-18, which was agreed in July 2015, aims to use property as a corporate resource to support and shape the delivery of appropriately located core services whilst driving efficiencies to help close the budget gap, including the generation of capital receipts.

The document records the achievements to date and the key principles for the period 2015-18. The Plan recognises that the scale of the challenge means that the size of the Council's portfolio will reduce; the cost of managing properties will reduce; and the nature of the council's estate will change.

- 3.3 Policy Committee at its meeting on 2<sup>nd</sup> November 2015 minute 35 (3) resolved that the Policy Statement on Premises Occupied by the Third Sector as set out in Appendix 3 be noted, and that the Statement be re-submitted to a future meeting of the Committee with a report on the consultation response.

#### 4. COUNCIL-OWNED PREMISES AND THE THIRD SECTOR POLICY STATEMENT

- 4.1 Reading Borough Council owns a number of properties occupied by the 3rd sector, with some occupiers paying rent at less than market value. These are reported annually to the Policy Committee as 'help in kind' to the voluntary sector.

In the context of significant budget pressures across the Council, property assets need to work hard to support the Council's objectives and priorities. Some of these assets will be sold or leased commercially and others will be let to the third sector. The number of assets will be reducing and a policy is required to provide transparency to lettings and disposals to the third sector especially where a reduction from market value is required and where competition exists for use of individual assets.

- 4.2 Reading Borough Council's Third Sector Policy Draft Statement states that when a Council asset is declared surplus in accordance with Corporate Asset Management Plan criteria and is therefore not required for operational or service delivery purposes by the Council or a partner organisation, it will be advertised for disposal usually on a freehold basis.

- 4.3 Third Sector organisations can bid for a surplus property. If a submission from the third sector is made which is less than market value, all bids received will be considered by Policy Committee. Additionally, third sector organisations will also be able to bid for a leasehold interest rather than the freehold of the premises, subject to certain criteria.

- 4.4 The policy, set out in the Appendix to the report, applies to new lettings as well as lease renewals and rent reviews. The intention is to provide transparency to the process of letting Council premises in particular those where a less than market value lease is offered, to enable third sector organisations to understand the Council's approach.

#### 5. CONTRIBUTION TO STRATEGIC AIMS

- 5.1 This contributes to the strategic aim in the Corporate Plan 2015- 2018:
- Safeguarding and protecting those that are most vulnerable
  - Providing the best life through education, early help and healthy living

- Remaining financially stable to deliver our service priorities

## 6. COMMUNITY ENGAGEMENT AND INFORMATION

- 6.1 A personal invitation was sent to all voluntary organisations with a lease agreement with Reading Borough Council to attend a consultation meeting on 9 September 2015, with an open invitation to other interested voluntary organisations to attend through Reading Voluntary Action News and Reading Borough Council's consultation website and/or to provide feedback via e-mail or the website. The meeting, chaired by the Leader of the Council, was well-attended and generated considerable feedback.
- 6.2 There was a general consensus expressed about the content of the Statement, with a number of organisations asking for clarification and one organisation expressing particular concerns. Officers made a direct response to specific concerns raised and further mitigated these concerns by producing detailed guidance notes which have been appended to the Policy. A further opportunity to comment on the revised draft and guidance notes was made available through the Council's website in December 2015.

## 7. EQUALITY IMPACT ASSESSMENT

- 7.1 Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 7.2 No negative impact has been identified in relation to the detailed proposals because it is not considered that the proposed policy statement impact significantly or differentially on those with protected characteristics.

As individual third sector leases become available or due for renewal, an EIA would be prepared as part of the decision making process for that particular property.

## 8. LEGAL IMPLICATIONS

- 8.1 Property leases are negotiated on an individual basis. Heads of Terms are agreed and draft leases issued to allow voluntary organisations to seek professional advice and to ensure informed consent.

## 9. FINANCIAL IMPLICATIONS

- 9.1 Reading Borough Council provides leases to third sector organisations at less than market rental to the value of £374,623 in 2015/16 as reported to the meeting of the Policy Committee on 19 January 2015.  
<http://www.reading.gov.uk/media/2454/item12/pdf/item12.pdf> (Schedule C refers)

## 10. BACKGROUND PAPERS

- Commissioning Budgets and Grants to the Voluntary Sector 2015 to 2016. Policy Committee 19 January 2015

# Premises Occupied by the Third Sector Policy Statement & Guidance Notes

## Index

Page No tbc

### POLICY STATEMENT

### GUIDANCE NOTES

#### SECTION 1 ACQUIRING A COUNCIL PROPERTY

1. Council owned properties - current VCS letting information
2. Why does the Council dispose of property?
3. How are decisions made to dispose of property?

#### SECTION 2 LEASING A COUNCIL PROPERTY

1. General Advice
2. Information about the building or asset to be leased
3. Length of lease
4. Land lease/ ground rent
5. Rental value
6. Rental at less than market value
7. Renewing a lease
8. Building Repairs
9. Building Improvement
10. Day to day running costs
11. Third Party Rights
12. Rights of Access/ easements

# Premises Occupied by the Third Sector

## Policy Statement

The Council owns a number of properties which are occupied by the third sector on a variety of different leases which expire at different times. Some of these occupiers pay rent at less than open market value.

This policy applies to new lettings and, on properties which are already occupied where lease renewals and/or rent reviews are due.

**New lettings** When a Council asset is declared surplus in accordance with Corporate Asset Management Plan criteria and is therefore not required for operational or service delivery purposes by the Council or a partner organisation, it will be advertised for disposal usually on a freehold basis on the open market.

Third Sector organisations can bid for a surplus property and all bids received will be considered by Policy Committee.

Additionally, Third sector organisations will also be able to bid for a leasehold interest rather than the freehold of the premises.

Those third sector organisations who wish to lease or acquire a property at less than the market rental value or wish to acquire a property at less than market value must meet the following qualifying criteria:

- i) **Financial accountability** - by demonstrating sound financial management and also setting out the business reason for seeking a less than market value interest.
- ii) **Quality service delivery** - by demonstrating how the organisation complies with or enhances the Council's strategic aims and policies whilst showing value for money
- iii) **Constitutional ability** - by demonstrating that the organisation is a properly constituted accountable legal entity able to deliver its organisational and business related obligations
- iv) **Efficient property management** - experience or evidence of expertise in all aspects of property management, or access to such expertise

### General lease terms

The Council's default position will be to grant a five year lease which is contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954.

Council leases will contain a provision whereby either side can determine the lease on giving not less than six months' written notice during the term.

The Council will only determine the lease in cases where the occupier ceases to operate, does not comply with the leasing obligations or fails to provide the service which it was envisaged that it would provide at the beginning of the lease.

In the event that a longer lease is required the organisation must quantify why a five year lease is not suitable.

Leases will be granted on a full repairing and insuring basis i.e. the organisation will be responsible for all internal, external and structural repairs to the building and its ongoing building insurance. In addition, occupiers will need to have cover for public liability, be responsible for all property costs (all utility charges, business rates etc.) Organisations will also be responsible for ensuring that buildings are fit for purpose and will be responsible for complying with all statutory obligations relating to occupation including; Health & Safety, DDA, Planning, Environmental Health and Building Regulations.

In the event that the Council grants a ground lease the organisation will be responsible for any construction as well as ongoing maintenance and management of land and buildings.

**Already in occupation - rent review** The Council will always quote the market rental value of the property to the occupier at rent review.

In the event that the occupier requires a rent at less than the figure quoted (or subsequently agreed between the parties) - (the market rent) - the organisation must show that it has managed the property correctly and that it complies with and adds value to the Council's strategic aims and policies. This is to enable the Council to evaluate why a letting at less than market value should proceed.

Rents at less than market value must be agreed either by Policy Committee or via Decision Book as appropriate.

**Already in occupation - lease expiry** At the expiration of a lease the Council will consider the future use of the property which will include letting the property at market value to an alternative occupier, disposing of the freehold of the asset to an alternative organisation or re-letting to the current occupier.

In the latter case the occupier will be subject to the New Lettings policy which is outlined above, including meeting the four criteria.

**Exceptions** In the event that a Third Sector organisation is seeking funding from a third party e.g. lottery funding which requires the organisation to have a minimum period of lease which is greater than five years then the Council will in the event that it supports the organisation, confirm in writing or if necessary contract that it will enter into a lease of suitable duration and terms in the event that a bid is successful. The organisation must meet the criteria as outlined in the New Lettings policy outlined above.

In certain circumstances at the Council's sole discretion and subject to additional considerations and guarantees the Council may act as guarantor to a Third Sector organisation by entering into a lease arrangement on their behalf (e.g. as Head lessee).

### **General**

In the event that the property is not kept in accordance with the tenant's obligations then the Council will serve the requisite notice to seek possession.

However unless there is a case of fraud or other illegal activity the Council will not pursue debt from named individuals.

Whilst Council officers will be helpful and supportive to organisations regarding the implications of occupying a building all organisations are strongly urged to obtain independent legal advice before signing a lease.

## GUIDANCE NOTES

### SECTION 1 - ACQUIRING A COUNCIL PROPERTY

#### 1. Council owned properties - what is currently let to the voluntary sector?

A list of properties that are leased to the voluntary sector by the Council is reported in January each year to the meeting of the Policy Committee. Some of these properties are let at less than market rental and this value is reported. You can see the list dated January 2015 at the following web link:

<http://beta.reading.gov.uk/media/2454/item12/pdf/item12.pdf> (page E39 Schedule C)

#### 2. Why does the Council dispose of property?

Reading Borough Council has an ongoing review of its properties and from time to time properties are identified for disposal. We are looking to reduce the number of properties we are responsible in order to use our buildings efficiently and to save revenue costs (such as maintenance and running costs (gas, electricity etc. There is also an annual capital target from the sale of assets which helps to either pay for Council capital projects or repay existing debt.

#### 3. How are decisions made to dispose of property which is occupied by the Council?

Before a decision is made to dispose of a Council property, a business case is prepared as to what to whether it is financially beneficial for the Council to dispose of its asset. If the property is declared surplus the property will be advertised at a market rate on commercial terms.

Properties will be advertised widely, usually through an independent estate or commercial agents, as well as through RVA News and Funding Digest to ensure that information is available to the local voluntary sector as part of a fair and open process. *NB Reading Borough Council cannot guarantee to provide individual organisations with information about a particular property for disposal.*

There is normally an 8 week period for bids to be submitted.

Formal bids from voluntary organisation are scored by officers and the results are presented to a meeting of the Policy Committee for their decision.

If a voluntary organisation is able to demonstrate that they can make efficient use of a property in a way that aligns itself with Council priorities for expenditure and is able to take responsibility for ongoing revenue costs, the Council will give the organisation the opportunity to prepare a business case for assigning a lease at market or less than market rental.

If there is a group putting themselves together and there is a request for more time it is possible to make the case and for that case to be made to Policy Committee who may wish to allow additional time for bids to be made if there is a credible expression of interest.

<i>Case Study - Whitley Wood Recreation Ground</i>
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*A local amateur football club that made regular use of the football pitches has a management agreement for their use. The Club is allowed to retain pitch hire fees in return for maintaining the grounds to a suitable standard. This saves the council money, helps the club develop and attract external funding, and also encourages young people to take part in healthy activity.*

## SECTION 2 - LEASING A COUNCIL PROPERTY

### 1. General Advice

A lease is a legal document and you should seek independent advice to ensure that you are fully aware of the implications of the lease. The Council's Heads of Terms follow "Leasing Business Premises: Model Heads of Terms" which in turn are based on the Code of Leasing Business Premises in England and Wales 2007.

Reading Borough Council generally uses a standard template for the leases that are offered to voluntary organisations and will discuss the content with you and allow time to ask questions before the lease is finalised. However, officers cannot give you independent advice as officers must act in the interests of the Council when they offer a lease.

You may wish to employ your own solicitor and/or surveyor to advise you and this is recommended. You may also wish to discuss the matter more generally with Reading Voluntary Action who can give you support and help you network with other voluntary organisations that have experience of leasing premises.

Any changes proposed to a lease should be reported to Reading Borough Council. This includes changes to the names on the lease e.g. because a trustee has retired; changes to the status of the organisation e.g. a charity becomes incorporated; modifications to the building or land e.g. a new floor covering in a listed building, a kitchen extension; cutting down a diseased tree; sharing with a 3<sup>rd</sup> party. NB this list is not exhaustive - if in doubt it is best to contact RBC officers to discuss proposed changes before they are made and to clarify if formal consent may be required under the terms of the lease.

### 2. Information about the building or asset to be leased

The Council will provide all available information about the condition of the building. This is likely to include building condition reports, Energy Performance Certificates, asbestos surveys and any other statutory information about a building. You may also ask to see how much was spent on utilities or maintenance in the last year (if available), and the draft lease will explain your responsibilities e.g. for boundary fences, land, repair and insurance.

This is not an exhaustive list and the information available will depend on the building or land in question. It is our intention to enable you to make an informed decision. However, it is also your responsibility to ensure that you do your own research e.g. what are the implications of a lease of a listed building?

### 3. Length of lease

In order to minimise risks - on both sides - short term leases are generally proposed. The Council's default position will be to grant a 5 year lease which is contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954. There are a number of exceptions:

- A ground lease would need to be longer than 5 years where a building is being built by a 3<sup>rd</sup> party.
- An application has been made for funding that requires a longer lease
- Where the costs of any major capital work to the building require a longer lease in order to justify the investment made by the occupier

The Council can commit to grant a longer lease where there are funding requirements (e.g. a letter of support to Big Lottery that RBC would grant for a lease of a specified number of years if the group were successful in their application) but will not grant a longer lease than 5 years on the chance that funding would then become available.

In the absence of specific guidance from a potential funder about security of tenure, current guidance from the Lottery would be used to determine the length of the lease. In November 2015, the Lottery requested the following:

- Grants of less than £100,000 - minimum of 5 years
- Grants of £100,001 to £350,000 - minimum 10 years
- Grants of more than £350,000 - at least 20 years

The minimum number of years remaining on the lease is calculated from whichever is the latest of the date you acquire the land and buildings or on practical completion of the building work. There are a number of detailed conditions about the type of lease required, which we would be happy to discuss on a case by case basis.

#### 4. Land lease/ ground rent

Where there is a lease of land where the land itself is used for social or recreational purposes e.g. football pitches or allotments, the lease will be for a default period of 5 years, However, it is clear that the ground lease would need to be longer than 5 years where a building is being built by a 3<sup>rd</sup> party. RBC can commit to grant a longer lease where there are funding requirements, subject to the conditions set out in paragraph 3.

##### *Case studies*

*World Education Berkshire have a 5 year lease of land for allotments to the rear of Florian Gardens which is used by the Food For Families project, involving local residents in growing their own produce and understanding healthy eating.*

*Reading Canoe Club has a 30 year lease of land on which they secured Lottery funding to build a club house with canoe storage.*

#### 5. Market Rental value

The market rental value of the property is based on current market evidence about what is available in the current market, and potential alternative uses of the property e.g. a property could currently be used as offices but is suitable for conversion to housing.

The rental value is used to set the baseline for the lease, and the terms of the lease will inform the tenant when a rent review will take place. The lease may allow for an annual rent increase e.g. in line with inflation or market rent. These terms will be made clear before the lease is signed are matters for negotiation.

An organisation may challenge the rental value, but must present evidence and a justification on which their challenge is based. Councillors would be asked to consider this evidence in order to reduce the rental income.

## 6. Rental at less than market value

'Peppercorn rental' may be offered to a voluntary organisation that can demonstrate that they provide significant value to Reading Borough Council in supporting service delivery and corporate priorities.

Voluntary organisations must provide a business case for a rental at less than market value which councillors will consider when they make a decision to write off potential rental income.

### *Case Study - True Food Cooperative*

*The Cooperative secured a 7 year lease for shop premises paying a base rent of half market rent which is topped up annually based on a percentage of their profit in their annual accounts, which will decrease the subsidy quoted. The business case was based on the use of the shop premises with outreach services to particular areas in Reading as part of a healthy eating project.*

## 7. Renewing a lease

The Policy applies to all third sector organisations, and in general terms sets out an approach which we normally take as leases expire and need to be renewed. Whenever a rent review is due or new lease granted a report is taken to councillors if the rent offered by the lessee is less than market value. The report would confirm the details of the use made of the premises; how local residents have benefited from this use over the period of the lease, and whether or not this would change for the term of the proposed new lease.

The usual policy is to contact the lessee 6 - 12 months before the lease expires to agree terms for a new lease. There is however no reason why the lessee couldn't commence negotiations earlier.

It should also be noted that the Council wishes to make sure it makes best use of its facilities for the benefit of the local community. This is not about annual performance management for some unspecified set of performance management criteria. Organisations change over time, sometimes in response to changing demographics and circumstances. We need to review the position when the lease is due for renewal - or around every 5 years - to ensure that the organisation and the service that it provides is still relevant to the needs of the local community, and that suitable hire agreements are in place.

The assessments of how/ to whom leases are renewed/let will not be just a financial assessment - see above paragraphs 3 and 4.

## 8. Building Repairs

The default lease from Reading Borough Council will give full repairing and insuring responsibility to the tenant. There are significant pressures on the Council's own budget to maintain a range of buildings from schools to care homes and by declaring a building surplus to requirements we are also alleviating pressure on repair and maintenance budgets. However, the Council is aware of the balance between risk and affordability for the voluntary sector and will seek to negotiate these matters.

Potential tenants will be given as much information as possible about the condition of the building and any additional responsibility they may have e.g. for boundary fences, trees, etc. This will help them understand the extent of the repairing responsibility and potential costs.

If a Tenant is required to return the property in no worse a condition than at the commencement of the Lease, a photographic Schedule of Condition would be attached.

In the event that major repairing obligations arose then either the occupier would serve notice on the Council that it wished to vacate or would seek a longer term.

If the building is known to require extensive repairs either at the start of the tenancy or in mid-tenancy, the potential tenant may ask for a longer lease whereby the costs of improvement could be properly funded e.g. if the roof needs to be repaired it would not be unreasonable to consider an extension to the lease to facilitate this investment by seeking external funding - (see paragraph 3 above),

Alternatively, the organisation could decide to hand the building back to Reading Borough Council. In this instance, trustees would not be pursued personally for the repair costs. The building would then go through the process of being declared surplus, i.e. potential disposal on the open market or for an appropriate bid from a voluntary organisation.

There are some buildings where repairs are a shared responsibility e.g. a shop unit under flats - the lease would make clear the extent of the repairing responsibility or contribution expected to communal repairs.

#### 9. Building Improvements

Permission should be sought from the landlord (RBC) before any significant changes or improvements are made to the building, and permission will not unreasonably be withheld.

Where a tenant has made improvements to the building, occupiers should discuss this with RBC staff to make it clear that an investment by a user on a property should not increase rent prior to the works being carried out. The alternative would be for the group to make the case at the rent review stage. It is certainly not the intention for an occupier to be under an obligation to increase the value of an asset which the Council then transfers on.

#### 10. Day to day running costs

Lessees are responsible for the day to day running costs of the building or land.

In 2015/16 a number of local groups receive a grant to support the running costs of their community building. In response to feedback a grants transition scheme was approved by the Policy committee on 2 November 2015.

<http://www.reading.gov.uk/media/4128/item06/pdf/item06.pdf>

The transition scheme provides a reducing level of support in 2016/17 and 2017/18 to existing grant recipients. There is also a funding 'pot' for any local group managing a community building to apply for funds to support capacity building or sustainable business plans.

## 11. Third Party Rights

Lessees are not able to enter into sub-leasing arrangements. If they are no longer able to make full use of the space, they should discuss options with Reading Borough Council. The Council does not usually allow subletting, but we do allow tenants to share and hire rooms to appropriate third parties.

Any 3rd party accommodation would have to be properly documented and couldn't exceed the length of lease outstanding which was granted to the original party; however third party occupation must be ancillary to the main user.

### *Case Study - Riverside Nursery/ ERAPA/ Newtown Primary School*

*Riverside Day Nursery, a registered local charity, currently leases a classroom from Newtown Primary School and is an appropriate ancillary user for a primary school. Because of pressure on school classroom space, they plan to move to a new building which they will share with East Reading Adventure Playground (ERAPA). ERAPA will have preserved rights as a third party to the lease between RBC and Riverside Day Nursery.*

In multiple tenancies of a property the Council would be responsible for all common facilities so no tenant would be deprived of access to a common facility.

## 12. Rights of Access/ easements

The lease will also explain where there are easements or rights of access to third parties e.g. utilities providers (gas, water, electricity). Tenants should be aware of their responsibility for maintaining clear drainage up to the point of the main sewer.