

Report to: Communities Scrutiny Committee

Date of Meeting: 25th November 2013

Lead Member/Officer: Lead Member: Finance and Assets
Head of Finance and Assets

Report Authors: Property Manager & Valuation and Estates Manager

Title: The granting of Leases of Council land and buildings to Community Groups and the policies and processes associated with the above.

1. What is the report about?

- 1.1 To consider the Council's policy for the granting of leases in particular to community groups. Information to be provided on the number of leases in existence, the frequency of their review, the processes for granting and managing the leases and for determining any reduction in the charges levied.

2. What is the reason for making this report?

- 2.1 To provide information regarding the Council's policy on granting leases in particular to community groups, the number of existing leases, the frequency of their review and the processes for granting, managing and determining any reduction in the charges levied.

3. What are the Recommendations?

- 3.1 That Members discuss the contents of the report and comment accordingly.

4. Report details.

- 4.1 The County owns a variety of non-operational assets and many of these properties are occupied under a variety of leases to a broad mix of Tenants.
- 4.2 The attached spread sheet at Appendix 1 provides a summary of the Council's Leases to organisations where less than the market rent is paid and the main terms of the agreement including the reserved rent under the Lease, rent review cycle, main user provisions and rent payable by the occupier are shown. Leases can vary from relatively short terms to longer periods which impact on the value of the asset to the Council and reflect to a degree the level of investment made by the Tenant. Appendix 1 is exempt from public disclosure by virtue of paragraph 14 of Part 4 of Schedule 12A of the Local Government Act 1972.
- 4.3 The Council has a standard policy for non operational property assets and a separate one for Lifelong Learning properties which have been declared

surplus as part of the Modernising Education Programme. These have a separate asset consultation process with the local community prior to handing the asset to the County Landlord.

- 4.4 Generally, when a property is considered surplus to a Service's requirements a report is presented to the Asset Management Group (AMG). Other Services are then consulted as to its suitability for alternative use within the Council. In the event that the no other Council service requires the asset, a further report is presented to the AMG declaring the asset surplus to the Council's requirements.
- 4.5 Full Member and service consultation is undertaken when declaring an asset surplus. Applications from Community Groups who wish to use surplus assets to deliver social or non commercial uses can be received through a variety of avenues at any time during the consultation process, including after the building is placed on the open market.
- 4.6 If an asset is not considered suitable for disposal for whatever reason or is difficult to market, then letting to non commercial occupiers can be a pragmatic solution in terms of keeping the building in use.

4.7 Procedure for Granting a Lease

- 4.7.1 When considering the request for a lease, officers apply commercial due diligence criteria to assess whether the applicant has the ability to satisfy the terms of a notional lease, including the payment of rent, repairing obligations, compliance with statute over the whole of the Lease term etc.
- 4.7.2 Each application is considered on its own merits. Many of the leases granted to community groups are linked to an ability to access grant funding, therefore a Lease would normally be negotiated for a minimum term of 21 years in order to satisfy funding requirements. In general so as to comply with a five year rent review pattern a Lease of 25 years would generally be discussed.
- 4.7.3 Rent Reviews within a Lease can be complex and time consuming exercises but commercially worthwhile when the Tenant pays the market rent. Where the Tenant is in receipt of an undervalue, the process can be similarly as time consuming but generate little additional revenue for the Council.
- 4.7.4 Lease terms are agreed between both parties in consultation with the Client Department. Agreed terms will be forwarded to the Head of Legal and Democratic Services to prepare a draft document and complete the same in due course.
- 4.7.5 The statutory power for the above is held by this Council under Section 123 of the Local Government Act 1972. This Act provides that Councils may dispose of their land in any manner they wish but that they must not dispose of land for less than the best consideration that can reasonably be obtained.

4.8 UNDERVALUE - General Disposal Consent (Wales) Order 2003

- 4.8.1 The Council applies standard criteria to assess the strength of any such request as per the undervalue letter at Appendix 2. The maximum undervalue the Council is willing to grant is 90% of the market rent and this will be for a fixed period usually linked to the rent review cycle. Any undervalue in the rent should be recorded by a side letter to the Lease.
- 4.8.2 Prior to the grant of a Lease at an undervalue an internal consultation is undertaken with the portfolio holding department, the relevant Director / Head of Service, and the Local Member in which the asset resides.
- 4.8.3 Community groups are generally not financially robust and requests for an undervalue below the market rent are common. All disposals of assets (leasehold and freehold) at less than best consideration are required to comply with the General Disposal Consent (Wales) Order 2003. The Order regulates the disposal of public sector land and buildings at undervalues of less than £2m. The District Auditor must be informed of all undervalues.
- 4.8.4 The Council's procedure for granting an undervalue is contained within Appendix 2 of this report. The criteria for granting undervalues have been tightened so that they identify the most deserving applicants. An assessment of their financial worth and ability to comply with the terms of the Lease is now required.
- 4.8.5 An assessment of potential lost revenue income and capital value as a result of any undervalue is also required.

5. How does the decision contribute to the Corporate Priorities?

- 5.1 No decision is required, however the leasing of Council owned land and buildings to community groups contributes to realising the Council's aspiration of being close to the community.

6. What will it cost and how will it affect other services?

Additional Resources needed (staffing or financial): N/A

ICT: N/A

Legal: The Head of Legal and Democratic Services is responsible for the preparation of the draft documentation.

Biodiversity: N/A

Effects on the Environment: N/A

7. What are the main conclusions of the Equality Impact Assessment (EqIA) undertaken on the decision?

EqIA included at Appendix 3

8. What consultations have been carried out with Scrutiny and others?

None, this report is at the request of Communities Scrutiny in response a request from the Ruthin Member Area Group (MAG).

9. Chief Finance Officer Statement

The Council derives a significant rental income from leasing property and any undervalue must be carefully considered. They are however a useful way of dealing with difficult to let building and to support community groups where the need arises.

10. What risks are there and is there anything we can do to reduce them?

10.1 The Council has accumulated a substantial number of properties subject to Leases let to community or similar tenants. These represent a portfolio of assets in their own right which provide services to the communities from County Council property. The following are worthy of consideration as regards managing the risk of these assets:

- These are assets where the Council has foregone either revenue income or a capital receipt to allow the current use to occur.
- These assets still require some oversight from the Landlord (Council) over the term of their lease.
- The management of non commercial assets under a notional commercial lease is difficult and time consuming and requires a degree of discretion and judgement by individual officers and their managers.
- The Council has a responsibility to ensure that the tenant has the capacity and ability to comply with the terms of the Lease and that they are in a financial position to justify an undervalue. This requires the Tenant answering questions raised in the public interest in which they may feel they are being unfairly targeted by their Landlord.
- The Council has a difficult position to adopt in which there is a pressure to be close to the Community and at the same time to reduce the number of assets and generate capital receipts.
- The Landlord / Tenant relationship can become an adversarial legal relationship. Leases are merely a form of a contract to use land. If one party breaks the contract, then the other party invariably has to resort to law for an effective remedy. This is not always appropriate in the case of Community organisations from a Landlords perspective.

11. Power to make the Decision

11.1 No decision required

11.2 Article 6.3.3 and 6.3.4 of the Council's Constitution sets out Scrutiny's powers with respect to scrutiny and policy development and review.

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