



ADUR & WORTHING
COUNCILS

Executive Members for Resources
29 May 2020

Decision to be taken on or after
8 June 2020

Key Decision: No

Ward(s) Affected:

Commercial Rents

Report by the Director for the Economy

Executive Summary

1. Purpose

- 1.1. This report seeks to address the ongoing management of the Councils' in borough property estates during the Covid-19 outbreak and response to tenant requests for support
- 1.2. This report aims to provide delegation up to £15,000 per tenancy in any one rent quarter, in order for officers to manage each request for additional support from tenants on its merits, assessing both the financial need of the tenant and impact on the Councils' revenue budgets

2. Recommendations

- 2.1. That Members delegate to the Property and Investment Manager, in consultation with the Head of Finance, authority to renegotiate rental provisions within leases and have discretion to provide rent free periods of up to £15,000 per tenant in any one quarter.

3. Context

- 3.1. The current unprecedented pandemic has materially impacted society and has had a profound impact on a number of business sectors and their ability to trade. In turn, this will impact businesses' ability to meet their operational costs and with no clear path to 'normal' the uncertainty that this has caused means that a number of businesses across Adur and Worthing are struggling to meet their rent obligations under their leases.
- 3.2. The Government has also introduced legislation, protecting commercial tenants who cannot pay their rent because of coronavirus from eviction. This means no business will be forced out of their premises if they miss a payment in the next 3 months, however rent is still due and will incur interest for late payment and could be recovered through other means if the landlord wishes (Statutory Demands and CRAR). At the moment the council proposes not to use any of the above but to engage in constructive and open dialogue with all tenants.
- 3.3. Businesses that have insurance cover for both pandemics and government-ordered closure should be covered, as the government and insurance industry confirmed on 17th March 2020 that advice to avoid pubs, theatres etc. is sufficient to make a claim as long as all other terms and conditions are met.
- 3.4. Insurance policies differ significantly, so businesses are encouraged to check the terms and conditions of their specific policy and contact their providers. Most businesses are unlikely to be covered, as standard business interruption insurance policies are dependent on damage to property and will exclude pandemics.
- 3.5. Where businesses are not insured or insurance is not likely to pay out, businesses are forced to prioritise which liabilities to meet and given the recent moratorium on tenant evictions, businesses may choose not to pay the rent on their property as a priority, choosing to retain cash for other liabilities.
- 3.6. Central government has provided a significant fiscal package designed to support the economy, the highlights as follows:

- Scheme 1 - Providing a grant of £10,000 to small businesses eligible for Small Business Rate Relief or Rural Rate Relief
- Scheme 2a - Providing a grant of £10,000 to retail, hospitality, estate agents, nurseries and leisure businesses with a rateable value up to £15,000
- Scheme 2b - Providing a grant of £25,000 to retail, hospitality and leisure businesses with a rateable value over £15,000.01 and below £51,000
- HMRC will reimburse 80% of furloughed workers wage costs, up to a cap of £2,500 per person per month
- The government will support businesses by deferring Valued Added Tax (VAT) payments for three months.
- Retail, hospitality and leisure businesses in England will receive a 12 months business rates holiday for the 2020 to 2021 tax year. Businesses that received the retail discount in the 2019 to 2020 tax year will be rebilled by their local authority as soon as possible.
- The government will introduce a business rates holiday for nurseries in England for the 2020 to 2021 tax year.
- The Coronavirus Business Interruption Loan Scheme supports SMEs with access to working capital (including loans, overdrafts, invoice finance and asset finance) of up to £5 million in value and for up to six years. The government will pay to cover the first 12 months of interest payments and any lender-levied fees, and will provide lenders with a guarantee of 80% on each loan
- Bank of England will buy short term debt from larger companies.

3.7. In addition there are the following support programmes available:

- The Coast to Capital Backing Business Grants is a £2 million fund that has been set up to provide grants to small businesses and social enterprises in our area who have been affected by COVID-19. Applications opening soon. See the Coast to Capital website for details of their Coast to Capital Backing Business Grants.
- The Councils have also been provided with funding to award discretionary business grants for those businesses who have not been able to benefit from other forms of government support.

3.8. Whilst the councils are working closely with businesses across the district and borough, officers are aware that the schemes do not capture all forms of business that may be struggling during this

pandemic. Some tenants of the councils will not benefit from the support outlined above and may 'fall in the cracks' between fiscal support schemes that have been made available.

- 3.9. In addition some of the above measures may not go far enough to support businesses, however there are also likely to be businesses that are eligible for the support above and find their trading position unaltered or even improved.
- 3.10. As a result of this, the council as private landlord, has received numerous communications from tenants requesting support to meet the legal obligations under the lease.
- 3.11. Whilst the councils are likely to find themselves with significant increased financial pressure as it seeks to address the impact of Covid-19, it is recommended that officers work with tenants to ensure that appropriate additional financial support is offered in order to support the local economy.
- 3.12. It is proposed that where possible the councils continue to support in borough businesses tenants through this time of uncertainty through the following means:
 - By offering to move to monthly payments (rent is as standard paid quarterly), seeking to improve cash flow for businesses whilst they adjust their trading models and apply for the relevant support noted above
 - where having considered the position of the tenant there is little prospect of receiving the rent monthly, it is proposed to give the tenant a 'holiday' meaning that the rent is not immediately due, but will be due within the financial year (or possibly longer if required).
 - If a business's ability to trade presents a real threat to the solvency and future existence of the business the council will consider 'waiving' rent for affected periods, subject to full transparency from the tenant and end of financial year review and where possible, in exchange for varied lease terms (perhaps a longer lease or guaranteed uplift in the future). This will be subject to a financial cap of £15,000 per tenant per

quarter and will depend on the amount of rent due under their lease.

- Any backlog of estates issues must also be agreed as part of the above (i.e. where tenants are in material breach of their lease or are yet to sign new agreements)

4. Issues for consideration

- 4.1. Not all tenants that seek support from the council as landlord will 'need' it, so it is important to recognise that each request will need to be considered on its own merits.
- 4.2. There is a risk of inconsistent treatment of tenants so keeping a clear record of correspondence will be important however there will always be an element of judgement in considering what additional support to provide to tenants.
- 4.3. At the moment there is no obvious timeline for lifting of restrictions or return to 'business as usual'. There is a risk that support provided to tenants may not be enough to retain solvency in the businesses and the risk of recovery of monies owed is increased.
- 4.4. In addition without a timeline for lifting of restrictions, there is a real risk that further requests are received from tenants, depending on the length of the impact on their business.
- 4.5. This is likely to present a potential cashflow challenge, but more significantly a revenue pressure for the council within 2020/2021 and likely increase in both bad debt and void periods within the estate.
- 4.6. Any ongoing property negotiations that are not urgent have in effect 'paused' but well advised tenants are seeking to capitalise on the current issues within the market reducing income to the council through lease renewal negotiations and rent reviews as they seek to negotiate favourable terms in order to retain their occupation.
- 4.7. Officers will seek to broadly prioritise support for tenants who have a demonstrable financial need as follows:
 - Charities, community/CIC and not for profit organisations
 - Tenants who deliver services on behalf of the council

- Those within the retail, hospitality, sports clubs and leisure sectors
 - Other tenants on a case by case basis but likely to exclude: food retail, pharmacies, manufacturers, ICT services and financial services
- 4.8. Tenants will need to work in partnership with the council by way of confirming the following
- They have no insurance in place to cover their rental costs
 - That trading has been materially impacted and are experiencing cashflow issues. Where appropriate for larger businesses cash flow forecasts will need to be provided
 - That the business has sought to exhaust alternative forms of support (e.g. government grants etc. listed above)
 - That businesses will disclose year end accounts to show the impact and benefit of support provided
- 4.9. The potential impact of this will be monitored through monthly budget reporting. Agreements will be documented through legal services and kept under review in light of the changing circumstances.

5. Engagement and Communication

- Officers have engaged across departments within the council, including Legal, Finance, Economy and estates to ensure a joined up approach in supporting our business tenants

6. Financial Implications

- 6.1. To date the Council has not had to provide any such rental reliefs, focussing on allowing deferral of payments rather than rent free periods.
- 6.2. Both Councils have provisions for void periods as follows:
- Adur £200,000
 - Worthing £250,000

The provision can be used to fund the cost of any reliefs granted.

7. Legal Implications

7.1 s1 of the Localism Act 2011 provides for the general power of competence and empowers local authorities to do anything which individuals generally do. This power applies to things that an individual may do even though they are in nature, extent or otherwise:

- (a) unlike anything the authority may do apart from the general power; or
- (b) unlike anything that other public bodies may do.

Where the power is conferred by s.1, it confers power to do it in any way, including:

- (a) power to do it anywhere in the UK or elsewhere;
- (b) power to do it for a commercial purpose or otherwise for a charge, or without charge; and
- (c) power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.

7.2 S111 of the Local Government Act 1972 provides that the Council shall have the power to do anything (whether or not involving expenditure , borrowing, or lending of money or the acquisition or disposal of any property rights) which is calculated to facilitate , or is conducive or incidental to the discharge of any of its functions.

7.3 If an agreement is reached between a Tenant and the Council the terms of that agreement are to be formally recorded by way of a side letter which is to be prepared by Legal and signed on behalf of both parties and a copy of that letter will be supplied to the Tenant by the Council as evidence of the terms of the agreement.

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Sustainability & Risk Assessment

1. Economic

- This proposal has potential positive local economic benefits to business tenants, but will potentially impact the council negatively in the short term through immediate cash flow. However, conditionality of granting rent frees seeks to manage the risk and reward of this approach, only seeking to offer financial support to tenants where necessary

2. Social

2.1 Social Value

- Matter considered and no issues identified

2.2 Equality Issues

- Matter considered and no issues identified

2.3 Community Safety Issues (Section 17)

- Matter considered and no issues identified

2.4 Human Rights Issues

- Matter considered and no issues identified

3. Environmental

- Matter considered and no issues identified

4. Governance

- Matter considered and no issues identified