

Report of Head of Resources

MANAGEMENT OF INVESTMENT PROPERTY ARREARS

1 Purpose of report

This report covers two aspects: a draft policy for dealing with arrears in commercial properties for which the council is landlord; and write off of historical arrears which cannot be recovered.

2 Executive summary

The council's approach to dealing with its commercial tenants, and the potential for debt, has not been reviewed since 2003, before the recent downturn. Given the change in the general economy and the council's financial position it is essential that the council has a robust policy for dealing with debt.

3 Appendices

Appendix 1 contains the draft policy for dealing with arrears. Appendix 2 contains details of existing debt which is recommended for write-off.

4 Proposed action:

The committee is invited to RESOLVE to:

- 4.1 Agree the policy and procedure for handling arrears in commercial property, to take immediate effect;**
- 4.2 Write off the debt listed in appendix 2 to this report.**

5 Background

- 5.1 The return from the council's investment portfolio enables the council to fund the running costs and maintenance of its many operational buildings – such as council offices, leisure centres, the theatre, cemetery chapels, public halls, pavilions, bandstands, bridges etc
- 5.2 Members last considered the policy and process for handling arrears and debt in Sept 2008 at the Audit and Performance Committee, but the policy reported at that time dated back to 2003.
- 5.3 The council's commercial property investment portfolio is managed via contract by Messrs Underwoods LLP. Rent collection and debt management is one of the key aspects of that contract.

5.4 Monthly contract meetings are held between the Principal Property and Facilities Manager and Underwoods, with levels of debt and arrears a standing item on the agenda, and a performance indicator for Underwoods..

6 Discussion

6.1 The council has, for a number of years, sought to maximise income from its properties in order to support operational properties and related services. It is essential therefore that arrears and debt are not permitted to escalate.

6.2 Debt management became particularly challenging during the economic downturn when businesses struggled, or even failed, with rents to the council being low on their priorities. There were a number of examples where business owners simply walked away from their premises, regardless of the fact that they had a binding lease with the council. Every effort was made to trace individuals in these circumstances, but sometimes without success. That effort still continues if there is any possibility of recovering the debt.

6.3 Some data is set out below for the last three financial years.

6.4 The council has a portfolio of approximately 250 units, and on 1 April 2012 there were 37 units vacant. The total number of new lettings during the three year period was 52, with only 12 vacant properties remaining on 1 October 2015 (2 of which are currently under offer). In addition a rolling programme of rent reviews and lease renewals took place.

6.5 The total income from lettings for each year is approximately £2.4m.

6.6 The level of arrears at the end of each year was as follows:

- (a) 31 March 2012: £294,102
- (b) 31 March 2013: £206,122
- (c) 31 March 2014: £200,767
- (d) 31 March 2015: £161,825

6.7 The policy and procedure aims to put in place a fair approach, giving tenants ample opportunity to manage rent payments, with support from Underwoods. Dialogues take place to encourage arrangements which address old debt and clear that on a manageable basis whilst the tenant still pays their current rent.

6.8 The recommendations to write off £82.5k of debt in appendix 2 have been made following concerted efforts to recover monies wherever possible, and continue to be made if there is any reasonable means of recovering the debt. This amounts to 3.4% of one year's annual income, but write off is not requested every year.

6.9 Inevitably there are a few businesses which fail each year. For all new tenancies the council requires a performance deposit, usually equal to three months' rent. This may, however, be insufficient to cover all liabilities, if, for instance, there is a significant claim for dilapidations or reinstatement. This deposit is always retained if the tenant defaults on any payments due to the council.

- 6.10 The council takes appropriate legal action against companies and individuals to seek rent recovery, but such action has to be balanced against the considerable cost of enforcement and the likelihood of actually being able to recover any money. When appropriate, investigative inquiries are made against companies and individuals.

7 Legal powers

The council seeks to recover debt using legal redress whilst taking into account other relevant legislation relating to human rights, data protection etc.

8 Financial and value for money implications

Any failure by a tenant to pay the agreed rent on time results in a further financial burden on the council, diverting monies from other sources to cover the cost of property services such as maintenance, repair, rates, utility bills etc. Given the council's financial situation it is not able to provide its current facilities unless the investment property is able to assist with the funding of operational properties.

9 Risk analysis

Ineffective management of debt will result in a further strain on the council's finances. Whilst the council seeks to be a fair and reasonable landlord it needs to act in a commercial way in order to realise the financial benefits of owning investment property.

10 Implications for resources

Council officers become involved with debt recovery and management to a limited extent; the majority of this work is covered by the contract with Underwoods.

11 Implications for stronger and safer communities, and equalities

None

12 Author and contact officer

Bridget Lawrence, Head of Resources

13 Consultees

Senior Management Team
Principal Accountancy Manager
Principal Property and Facilities Manager
Messrs Underwoods LLP

14 Background papers

Arrears reports and management documentation produced monthly.

BOROUGH COUNCIL OF WELLINGBOROUGH

POLICY AND PROCEDURE IN RELATION TO RENT ARREARS IN INVESTMENT PROPERTY

Policy

The council will ensure financial prudence in the effective use of resources, carrying out its affairs with integrity, fairness, courtesy and openness.

These principles, and the procedures below, will be applied to the management of rent (including Licence and other similar fees) collection and arrears.

Note: all references to “days” below refer to working days, not calendar days:

1. Standard procedures

- a) Invoices will be sent to each tenant at least 2 weeks before the due date.
- b) If full payment is not received 5 days after the due date a reminder will be issued to the tenant.
- c) If payment is not received 10 days after the due date, the tenant will be contacted by telephone or by a visit to their premises to request immediate payment.
- d) Records will be kept of all telephone calls and visits in relation to all tenants subject to late payment procedures.
- e) If full/proper payment is not made in accordance with the provisions of the individual leases the council will proceed with enforcement action (see 3 f iii below) after liaising with the council’s property manager to check that there is no grievance with the tenant or modification to procedures.

2. Late payment

- a) Where a tenant makes late payment more than twice within a 2 year period they will be classified as a late payer and subject to a more accelerated procedure for recovery of arrears as outlined below:
- b) Late payers will be contacted on the due date if payment is not made.
- c) A reminder will be sent to late payers on the day after the due date, and will specify that - as they are late again - they will be under stricter procedures

where reminders will be issued sooner and interest in accordance with individual lease interest provisions will be strictly applied.

- d) If full/proper payment is not made in accordance with the provisions of the individual leases then the council will proceed with enforcement action (instruct bailiffs/collection agency to attend to obtain monies) after liaising with the council's property manager to check that there is no grievance with the tenant or modification to procedures.
- e) Future demands will be marked to remind the tenant of potential interest charges.

3. Bad payers

- a) A tenant will be regarded as a bad payer if failing to pay under procedures outlined above.
- b) The tenant will be contacted by telephone to advise that failure to pay within 48 hours will lead to interest being charged in accordance with their lease, and the enforcement procedure instigated.
- c) The proposed action will be confirmed to the tenant by way of a recorded delivery letter to both the premises and the registered office of the tenant (if applicable).
- d) An arrears statement will be provided, together with a record of poor payment history, and previous written reminders. The letter will include interest information if applicable.
- e) If arrears are still unpaid enforcement action will be taken, as outlined in 4 below.
- f) Where the issue is resolved a letter will be sent by recorded delivery to the premises/registered office, stating that in the future a more rigid enforcement procedure will be put in place as follows:
 - i) Reminders sent if not paid on the due date and enforcement action will be implemented within 5 days
 - ii) Interest will be strictly applied in accordance with this policy
 - iii) Bailiff/forfeiture may be used without prior warning after the 5 day period
 - iv) Tenant will be telephoned on rent due date for payment

4. Enforcement

- a) If payment has still not been made, the council will instigate enforcement action. Each case will be assessed individually but, when all other courses of

action as outlined above – and as contained within the lease – have been exhausted, enforcement action will be taken.

- b) During the enforcement period interest will continue to accrue.
- c) Enforcement action will also apply where the tenant has vacated the property before the lease has ended.
- d) Enforcement action will commence 5 days after the last action taken to request payment.
- e) Enforcement action will usually mean that bailiffs are instructed. If appropriate it may also include other legal proceedings, including forfeiture of the lease; this will be dependent on circumstances. The council's property manager will instruct District Law to take the appropriate action, in accordance with legislation and best practice.

The above procedures are subject to the specific terms and conditions of individual lease documents and any agreed variations thereto.

Head of Resources

October 2015

WRITE-OFF REQUESTS

Rent arrears

The rent arrears have been reviewed and below are the recommendations for write offs of debts that are non-recoverable.

Write-offs

The following debts are recommended for write off for the reasons explained below.

1. CHJ Supplies 3 Bradfield Road Wellingborough: Debt £19,116.70

CHJ Supplies had a 10 year lease on the unit from 20 July 2006 expiring 19 July 2016 at a rent of £16,488 per annum, paying a service charge of £2,760 per annum. The lease had a review with a tenant option to break at the end of the fifth year. A deposit of £4,122 was provided.

In September 2009 a request was made by the tenant for a 50% reduction in rent and approval to pay an additional £250 each month off their arrears. CHJ had suffered a significant drop in orders over the previous year with profits reducing by a fifth. They had reduced their overheads by reducing staff and other costs but cash-flow problems meant they could not obtain the stock they needed to complete orders so customers were going elsewhere. They were granted a 50% rent reduction from 1 July 2009 to 31 December 2009 when a further review would be undertaken.

At the time there were 4 empty units on the site with an additional one due to come back at the end of that year.

A further 6 months' rent reduction was granted from 1 July 2010 to 31 December 2010 on the basis that this amount would be deferred and paid off by the tenant in the future; interest would continue to be applied to the account. If a payment was missed further action would be taken.

CHJ's rent went back up to the full level of £16,488 per annum from 2011 with CHJ making rent payments every month but not paying any of the arrears.

In February 2013 CHJ advised that they would find it difficult to continue with the payment plan and requested a re-gear of the lease to resolve the situation. They requested a new 10 year lease at the current market rent rather than the level they were paying, which had been set 6 years before and was above current market level. They therefore wished to pay £13,880 per annum and have a rent review in the fifth year. If this was agreeable they would continue to pay at the level of £16,488, with the difference being used to clear the arrears. Preparations were made for a surrender of the existing lease and a new lease on the above basis. This did not go through to completion as CHJ did not sign the documents.

In August 2013 Underwoods were advised that CHJ Supplies had ceased trading, the company and any assets had been sold to Inter County Cleaning, and that CHJ had vacated the property. At that point the lease was forfeited, the locks changed on the building, and District Law instructed to recover monies outstanding.

The Statutory Demand was served on 11 January 2014; District Law could not issue a Bankruptcy Petition against CHJ Supplies until after 1 February 2014 as they had 21 days to pay the Demand. No monies were received and it was felt that further pursuit of the company would be fruitless as it was due to be struck off from Companies House; it therefore seemed there would be no likelihood of the debt being recovered.

2. Bright Windows Wellingborough Ltd, 4 Enterprise Court: Debt £7,768.66

Bright Windows took a 3 year lease of 4 Enterprise Court on 6 February 2013 at a rental of £5,000 per annum and service charge of £1,778. A deposit of £1,250 was provided.

In May 2013 the tenant contacted Underwoods to advise that the business was struggling and asking to terminate the lease. The owner said he was considering closing the company or moving it across to his other building business. The tenant was advised that he had no break options within the lease and were tied in for the full term of 3 years, but did have the option of assigning their lease across to another person/company for the remainder of the term.

The tenant then vacated the unit, bailiffs were instructed to forfeit the lease, and District Law were instructed to commence legal proceedings against Bright Windows to recover the arrears. A payment plan was agreed but monies never received. The company closed down and removed from Companies House so it was considered that monies would not be recovered via legal action.

3. Glenbank Parking Spaces – Various Tenants: Debt Total £1604.33

Various parking spaces within the Glen Bank car park were licensed to neighbouring businesses and residential tenants to permit them to park a vehicle within a space for a yearly fee of £250 (more for a larger space).

This worked well for the first year but when at the point of renewal tenants did not wish to pay. The lock to the car park was damaged and was not repaired for 5-6 months, leaving the car park free for all to use, with no-one having a right to their space despite paying for it. It was agreed in 2011 that a reduction in charges reflect this. There are debts outstanding for the renewal year, which have remained unpaid. New agreements are now in place on the car park with monies paid up front for the year so that this cannot recur. There is no likelihood of these debts being recovered.

4. Platinum Salons Limited, 23 Market Street: Debt £3,393.54

The above property was leased to Platinum Salons Limited from April 2004 for 6 years at a rent of £7,250 per annum. Platinum Salons paid on time up until mid-2011 when payments then ceased to arrive. A new lease had been agreed with the tenant in October 2010 following the expiry of their original lease but this was not completed, with the tenant never returning signed documentation. Due to non-payment the

property was forfeited mid-2012 and re-let to one of his employees who took a new lease and is still in occupation of the property, paying rent each month.

Platinum Salons were pursued for the money but a letter was received from Elwell Watchorn & Saxton LLP, acting as liquidator for the company. No dividend has ever been received leaving the balance outstanding. The company was dissolved in Companies House so this debt is unrecoverable.

5. 26 Market Street: Debt £7,347.98

26 Market Street was leased to a tenant from 26 September 2008 until 25 September 2013 at a 50% rent basis for the first 3 months then up to £12,275 per annum. The property was used as a fancy dress shop.

The business initially did well and it was not until 2010 that the tenant had problems paying the rent due to the economic climate, as well as roadworks along Market Street which limited access to the properties and led to a reduction in custom and income.

Despite making efforts to cover the cost, the owner requested an early surrender of his lease on the basis that a payment plan would be agreed and set up to clear the arrears.

This was approved in November 2010 but the payment plan was not adhered to. The tenant entered into an IVL (Individual Voluntary Liquidation) style agreement and three small payments of £10.73 have been received since 2012. It is unlikely that the full amount will ever be recovered.

6. Wellingborough Black Consortium, 6 Dexters Chambers: Debt £3,314.32

6 Dexters Chambers was let to Wellingborough Black Consortium on a lease dated 10 October 2005 for a term of one year paying a rent of £1,450 per annum. The tenants held over on this lease and vacated the building in June 2010 with a credit amount on their account.

Annual service charge reconciliations were then carried out for 2007 to 2010 and bills issued to all tenants at Dexters Chambers. At that time the service charge was not paid in advance but was calculated annually at the end of the year and an invoice for the year's proportion issued to tenants. When Underwoods took over the management of the estate they were asked to bring the service charge up to date, including calculating amounts that related to previous years. Bills were issued to Wellingborough Black Consortium, but were disputed by them. Given that historical information to verify this is no longer available this amount should be regarded as unrecoverable.

7. KP Taxis, 7 & 8 Dexters Chambers: Debt £1,759.45

A lease was granted in September 2009 for 3 years at a rent of £2,700 per annum with an annual break option for the tenant.

The tenant vacated the property in July 2010 without exercising their break option and simply notified the council that they had vacated, and refused to pay any charges thereafter. The business was then sold with the new owners unwilling to pay the debt that was outstanding. Interest was accrued on the account and recovery is unlikely.

8. Kurvaceous Limited 2 Pebble Lane: Debt £18,540.86

The former tenants, Curves, sold the business and the new owners changed the name to Kurvaceous Limited. For finance reasons they were granted a new 10 year lease from February 2010 at a rent of £11,500 per annum.

Once the business had been purchased the new owners discovered that it was not as originally perceived, having fewer customers and being less profitable. Kurvaceous advised Underwoods of their financial difficulties and attempts were made – unsuccessfully - to meet to discuss the situation. A payment plan was suggested, but never agreed by the tenants.

Kurvaceous notified Underwoods in November 2012 that they would be closing the premises due to a reduction in customers and increased overheads, and they would be returning the keys for the premises. District Law advised the best option would be to forfeit and relet the property. District Law were then instructed to pursue the outstanding monies but the company was dissolved, with no money forthcoming.

9. Wellingborough Funeral Services Limited 27a Sheep Street: Debt £6,059.27

A new 12 year lease was agreed on the property to Wellingborough Funeral Services Limited and completed in December 2012 at a rent of £4,000 per annum. A deposit of £1,000 was provided.

The company experienced financial difficulties and fell behind with payments. Bailiffs were instructed to obtain monies outstanding but the property was vacant. The lease was then forfeited and the property taken back. District Law were instructed to recover arrears from the company only to discover that it had been dissolved in November 2013 and no monies could be recovered.

10. Outridge Limited The Calendar Public House Swinburne Road: Debt £2,856.51

A 99 year lease was granted on The Calendar Public House at Swinburne Road to Outridge Limited at a rental of £2,320 per annum. In 2009 it was unoccupied. Outridge had entered into an option agreement to purchase the site and sell for redevelopment with the net profit being split between the council and Outridge once a satisfactory planning consent was in place. Outline consent was granted in 2009 for flats but the scheme was not marketable and a revised planning application was to be submitted for development of 13 houses. In addition to sharing the profit on the original sale the council was due to receive an additional 2/13ths of the proceeds. In the interim Outridge were unable to pay the rent, and it was agreed that the rent be reduced to £1 per year from October 2009 to March 2010 by which time the site would hopefully be

sold. In 2011 it was agreed to sell the site to Seagrave Developments who were to develop the houses on the site. A sale proceeded through to completion.

After the rent reduction the rent was put back to the full amount, but payment was queried and not received despite promises to the contrary. More than once Outridge queried whether the peppercorn period would be extended, advising they had no money, also querying the terms of the original option agreement. During this period Underwoods continued to chase the debt but no monies have been received.

11. Pro Fishing Tackle Limited 6 Trojan Centre: Debt £10,697.77

Pro Fishing Tackle Limited were in Unit 10 Trojan Centre until September 2008 when they relocated to a larger unit on the site (Unit 6) and took a 5 year lease at an annual rent of £7,932 per annum with the council holding a deposit of £1,170.

In April 2010 a rent reduction of 50% for 4 months was granted when the tenant sought assistance after struggling during bad weather with lakes being frozen and a drop in his income together with a large VAT bill that he had received. As part of the agreement no interest was to be charged on his account if the arrears were cleared by the end of August.

In February 2012 the tenant was still struggling to keep up with the rent despite a payment plan being agreed. Discussions took place to assist him, and an option to relocate into a smaller unit was offered.

Over the Christmas period 2011 the tenant vacated the unit, asking to hand it back and agree a payment plan for the arrears. Underwoods learnt that the company had opened up a shop in Finedon and bailiffs were instructed to attend the new premises to obtain the monies due, then forfeit the lease on the property at the Trojan Centre to avoid the debt increasing further.

In March 2012 the tenant put forward a payment plan to clear the arrears over 5 years on the condition that no interest was added to the account. This was not acceptable and District Law were instructed to pursue for the monies due. District Law obtained a revised payment plan of £300 per month; this was approved on the understanding that, if Pro Fishing defaulted, the matter would be referred to the courts. Payments were received up until the end of October 2012, at which point Pro Fishing Tackle closed their shop in Finedon and disappeared, then the company was dissolved.

